

IN THE INCOME TAX APPELLATE TRIBUNAL
SMC "A" BENCH : BANGALORE

BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER

ITA No.283/Bang/2016
Assessment year : 2009-10

Shri S. Linganna, Proprietor, M/s Raghavendra Filling Station, 9/18, II Cross, Gandhi Nagar, Ballari – 583 103. PAN: AARPL 3545N	Vs.	The Deputy Commissioner of Income Tax, Circle 1, Ballari.
APPELLANT		RESPONDENT

Appellant by	:	Shri B.S.N. Prasad, Advocate
Respondent by	:	Smt. Swapna Das, Jt. CIT(DR)

Date of hearing	:	29.06.2016
Date of Pronouncement	:	30.06.2016

ORDER

This appeal is preferred by the assessee against the order of the CIT(Appeals), Gulbarga dated 29.12.2015 for the assessment year 2009-10 *inter alia* on the following grounds:-

“1. The impugned appellate order passed by the learned CIT(A) is arbitrary, erroneous, unreasonable and opposed to the facts and circumstances of the case and the law and deserves to be annulled.

2. The learned CIT(A) has erred in dismissing the appeal filed by the Appellant merely on a technical ground of non-appearance by the Appellant, without going into the merits of the case.

3. The learned CIT(A) has erred in relying on the decision in the case of CIT v. Multiplan India (P.) Ltd. [1991] 38 ITD 320 to dismiss the appeal, without appreciating that the hon'ble Delhi bench of the Tribunal has only ruled in that case that no question of law arises from its order and that the decision has no application to the Appellant's case.

4. Without prejudice to the above, the learned CIT(A) has erred in not deleting the addition of Rs. 15,98,290 made by the learned AO as deemed dividends, without the conditions precedent to the invoking of section 2(22)(e) being satisfied, viz., presence of a running account between the payer and the payee reflecting commercial and business transactions and absence of any loan or advance carrying an obligation on the part of the Appellant to repay.

5. Without prejudice to the above, the learned CIT(A) has erred in not deleting the addition of Rs. 11,17,701 made by the learned AO under section 14A read with rule 8D, in the absence of any income claimed as exempt from tax and ignoring that the Appellant had himself made the disallowance warranted under section 40(a)(ia) in the statement of computation of income and there was no scope for any further disallowance even under section 40(a)(ia).

For these and any other additional grounds which the appellant craves leave to urge at the time of hearing, the hon'ble Tribunal may be pleased to grant, in the interest of equity and justice, appropriate relief by deleting the addition and the disallowance made by the learned AO.”

2. During the course of hearing of the appeal, the Id. counsel for the assessee has invited our attention to the order of the CIT(Appeals) with the submission that the CIT(Appeals) has afforded only one opportunity to the assessee and on that date the assessee could not appear on account of his illness and the CIT(Appeals) dismissed the appeal *in limine*, without dealing with the issues on merit. The Id. counsel for the assessee further

contended that under the Income-tax Act, the CIT(Appeals) is required to adjudicate the appeal on merits, even if none appeared on behalf of the assessee. Therefore, the order of the CIT(Appeals) deserves to be set aside and the matter be restored to him with a direction to adjudicate the issues afresh, after affording opportunity of being heard to the assessee.

3. The Id. DR simply placed reliance upon the order of the CIT(Appeals).

4. Having carefully examined the orders of the lower authorities, we find that undisputedly the CIT(Appeals) has dismissed the appeal *in limine* without dealing with the issues on merit, whereas he is not empowered to do so. Under the Income-tax Act, he is required to adjudicate the appeal on merits, even if none appears on behalf of the assessee. In light of these facts, we set aside the order of the CIT(Appeals) and restore the matter to him with a direction to readjudicate the appeal on merits, after affording opportunity of being heard to the assessee.

5. In the result, the appeal is allowed for statistical purposes.

Pronounced in the open court on this 30th day of June, 2016.

Sd/-
(SUNIL KUMAR YADAV)
Judicial Member

Bangalore,
Dated, the 30th June, 2016.
/D S/

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Assistant Registrar,
ITAT, Bangalore.