

**IN THE INCOME TAX APPELLATE TRIBUNAL "D", BENCH KOLKATA
BEFORE SHRI A.T.VARKEY, JM & DR. A.L.SAINI, AM**

आयकर अपील सं./ITA No.742/KoI/2016

(निर्धारण वर्ष /Assessment Year:2012-2013)

Shri Tapan Debnath, A.P. Nagar, Sonarpur, South 24-Pgs., Kolkata-700150	Vs.	ITO, Ward-26(2), 2, Gariahat Road (South), Kolkata-700068
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AODPD 6838 E		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by : Shri Pronabes Sarkar, Advocate
Revenue by : Shri G.Mallikarjuna, CIT

सुनवाई की तारीख / **Date of Hearing** : **26/12/2016**

घोषणा की तारीख/**Date of Pronouncement** **28/12/2016**

आदेश / O R D E R

Per Dr. Arjun Lal Saini, AM:

The captioned appeal filed by the Assessee, pertaining to assessment year 2012-2013, is directed against the order passed by the Id. Commissioner of Income Tax (Appeals)-7, Kolkata, in Appeal No.708/CIT(A)-7/Wd-26(2)/14-15, dated 19.01.2016, which in turn arises out of assessment order passed u/s.143(3) of the Income Tax Act, 1961 (in short 'the Act') dated 29.01.2015.

2. Brief facts of the case qua the assessee are that the assessee filed return of income on 13.11.2012, declaring a total income of Rs.2,30,510/-. The return was processed u/s 143(1) of the I.T. Act, 1961. Later on, the case was selected for scrutiny u/s 143(3) of the Act and the AO has completed the assessment by making the addition of Rs.33,81,598/- on account of suppression of sales.

3. Aggrieved from the order of AO, the assessee filed an appeal before the Id. CIT(A), who has confirmed the addition made by the AO observing the followings :-

"The case was fixed by me on 17.09.2015 and it is on record that the appellant has received the said notice on 18/09/2015. On 15/10/2015 the appellant has filed a letter asking for adjournment due to Durgapuja. Therefore, the case was fixed for hearing on 27/11/2015 but none attended. On 26/11/2015 same letter as is on 15/10/2015 has been filed by the appellant as 'please adjourn the date of hearing and re-fix the same on any of your convenient date'. The case was again finally fixed on 05.01.2016 but none attended. Under the circumstances, it appears that the appellant does not want to pursue this appeal. Therefore, I have no option but to decide the appeal on merits on the basis of material available on record.

All the grounds of appeal are related to the additions made by the AO amounting to Rs.33,81,598/- representing the difference in purchases between the appellant and the supplier. The appellant disclosed purchases of Rs.1,24,32,210/- from Khadim and whereas Khadim has informed the AO that the sales was of Rs.90,50,612/-. There was a difference of Rs.33,81,598/-. The AO requested the appellant to reconcile the difference. The appellant failed to reconcile of the differences before the AO and the AO has made the addition. In the grounds of appeal the appellant stated that the AO has made the addition without considering the VAT. The case was posted for several times. The appellant did not respond to the notices issued by this office. It is the obligation on the part of the appellant to reconcile the difference of Rs.33,81,598/- and also to explain the source for the difference amount. The appellant also required to explain and show the evidence regarding VAT payments and source but in this case though several opportunities were given to the appellant, the appellant has failed to furnish any evidence for the source. Therefore, I hold that the AO has rightly made the addition and the same is confirmed."

4. Not being satisfied with the order of Id. CIT(A), the assessee is in further appeal before us and has taken the following grounds of appeal :-

1. For that on the facts of the case, the order passed by the Ld. C.I.T.(A) is completely arbitrary, unjustified and illegal.

2. For that on the facts of the case, the order passed by the Ld. C.I.T.(A) without giving reasonable opportunity of hearing to the assessee which is completely arbitrary, unjustified and illegal.

3. For that on the facts of the case, the Ld. C.I.T.(A) was wrong in not considering the merit of the case, therefore, the order passed by the Ld. C.I.T.(A) is completely arbitrary, unjustified and illegal.

4. For that on the facts of the case, the Ld. C.I.T.(A) was wrong in deleting the order of the A.O. and confirming the addition amounting to Rs.33,81,598/- as overstatement of purchase which is completely arbitrary, unjustified and illegal.

5. For that on the facts of the case, the Ld. C.I.T.(A) was wrong in not considering the fact that the A. O. has added the difference of purchase without considering the VAT return as well as the VAT Audit Report under the W.B. VAT Act, which was confirmed by the CIT(A), thus his action is completely arbitrary, unjustified and illegal.

6. For that the interest u/s. 234A & 234B charged mechanically is wrong & illegal.

7. For that the appellant reserves the right to adduce any further ground or grounds, if necessary, at or before the hearing of the appeal.

5. **Although in this appeal, the assessee has raised multiple grounds of appeal, but at the time of hearing the main grievance of the assessee has been confined to ground No.2 only and other grounds were not pressed. The solitary grievance of the assessee is that the Id. CIT(A) had passed the order without giving reasonable opportunity of hearing to him.**

5.1 The Ld. AR for the assessee has vehemently submitted that Id. CIT(A) has passed the order without giving reasonable opportunity of being heard to the assessee which is completely arbitrary, unjustified and illegal. As per the order of the Id. CIT(A), the case was fixed for hearing on 17-9-2015 and it was on the record that the assessee has received the said notice on 18-9-2015. On 15th October, 2015 the assessee has filed a letter asking for adjournment due to Durgapuja. Therefore, the case was

fixed for hearing on 27-11-2015 but none attended from assessee's side. On 26-11-2015 the assessee has filed the same letter as is on 15-10-2015, had been filed by the assessee stating as "please adjourn the date of hearing and re-fix the same on any of your convenient date".

It appears to us that the assessee had attended the office of Id. CIT(A) and requested for adjournment. The Ld. CIT(A) passed the order ex-parte without presence of the assessee, which is against the principle of natural justice. The Ld. CIT(A) ought to have given further opportunity to the assessee. Therefore, the assessee has requested before us to remit the case back to Id. CIT(A) to adjudicate the issue afresh.

6. On the other hand, Id. DR has primarily reiterated the stand taken by the Id. CIT(A), which we have already noted in our above para, and is not being repeated for the sake brevity.

7. Having heard the rival submissions, perused the material available on record, we are of the view that there is merit in the submissions of the Ld. AR for the Assessee, as the proposition canvassed by Id. AR for the Assessee are supported by the facts narrated by him above. As Id. AR has pointed out that the assessee had attended the hearing fixed on 17-9-2015. The assessee filed adjournment application on 15-10-2015. The assessee also filed adjournment petition before the Id. CIT(A) on 26-11-2015 to re-fix the date of hearing. Therefore, considering the factual position, we are of the view that this issue requires fresh adjudication on the part of Id. CIT(A). Hence, we are of the view to remit the case back to the file of Id. CIT(A) to readjudicate the issue after giving proper

opportunity of being heard to the assessee. Accordingly, we remit the case back to the file of Id. CIT(A).

8. In the result, appeal of the Assessee is allowed for statistical purposes.

Order pronounced in the open court on this 28/12/2016.

**Sd/-
(A.T.VARKEY)**

न्यायिक सदस्य / JUDICIAL MEMBER

**Sd/-
(DR. A.L.SAINI)**

लेखा सदस्य / ACCOUNTANT MEMBER

कोलकाता /Kolkata; दिनांक Dated 28/12/2016

प्रकाश मिश्रा/Prakash Mishra,नि.स/ PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant- Shri Tapan Debnath
2. प्रत्यर्थी / The Respondent.- ITO Ward-26(2), Kolkata
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार

(Asstt. Registrar)

आयकर अपीलीय अधिकरण, कोलकाता / ITAT, कोलकाता