

IN THE INCOME TAX APPELLATE TRIBUNAL "D", BENCH KOLKATA
BEFORE SHRI S.S.VISWANETHRA RAVI, JM & DR. A.L.SAINI, AM

आयकर अपील सं./ITA No.2085/Kol/2016

(निर्धारण वर्ष / Assessment Year :2010-2011)

M/s Stainless International (P) Ltd. 5A, N.C. Dutta Sarani, Ground Floor, Kolkata-700001	Vs.	I.T.O. Ward 5(1) Kolkata, P-7, Chowringhee Square, Kolkata-700001
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAMCS5299N		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

राजस्व की ओर से /Revenue by : Anitabh Bhattacharya, Addl.CIT-DR

निर्धारिती की ओर से /Assessee by : Gaurav Mathur, Adv.

सुनवाई की तारीख / Date of Hearing : 19/04/2017

घोषणा की तारीख/Date of Pronouncement 21/04/2017

आदेश / O R D E R

Per Dr. Arjun Lal Saini, AM

The captioned appeal filed by the Assessee, pertaining to the assessment year 2010-2011, is directed against the order passed by the Id. Commissioner of Income Tax (Appeals)-2, Kolkata, in appeal No.170/CIT(A)-2/15-16, dated 18.08.2016, which in turn arises out of an order passed by the Assessing Officer u/s.147/143(3) of the Income Tax Act 1961, (hereinafter referred to as the 'Act'), dated 29.03.2015.

2. Brief facts of the case qua the assessee are that the assessee is a private limited company and has submitted its return of income on 30.09.2010 disclosing total income of Rs.2,62,872/-. The return of income of the assessee was processed U/s 143(1) of the Act on 16.04.2011. Subsequently, it has been brought to the notice of the Assessing Officer that the assessee company had made bogus purchases from 1) Bhagyalaxmi Steel Industries 2) Jineshawar trading company 3) Kushal

Steel Corporation of Rs.25,31,416/-, Rs.3,67,851/- & Rs.8,081/- respectively aggregating to Rs. 29,07,348/- during the F.Y. 2009-10 relevant to the A.Y. 2010-11. In consequences of the observation and above facts, a notice U/s 148 dated 03.02.2014 was issued to the assessee company. The Assessing officer completed the assessment U/s 147/ 143(3) of the Act by making the disallowance of Rs. 29,07,348/- on account of bogus purchase.

3. Dissatisfied with the order of the Assessing Officer, the assessee filed an appeal before the Id CIT(A) who has passed the ex-parte order and confirmed the addition made by the Assessing Officer. Before the Id CIT(A), the assessee did not file any written submission and used to take adjournment only. On the last date of hearing on dated 05/08/2016, none appeared on behalf of the assessee therefore, the Id CIT(A) passed the exparte order and confirmed the addition made by Assessing Officer.

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

- 1.That the Id. AO made addition of Rs.29,07,348/- on account of purchases from (i) M/s Bhagyluxmi Steel Industries (ii) Jeneshawar Trading Company (iii) kaushal Steel Corporation respectively U/s 69C of the Income Tax Act, 1961 without going through the facts and circumstances of the case and also without considering the material for assessment placed before the Id AO, and the Id CIT(A) conformed the same without giving proper opportunity of being heard which is unjustified, bad in law, against the natural law of justice and craves deletion.*
- 2.THAT the AO, initiated the penalty proceedings U/s 271(1) (c) of the Income Tax Act 1961 is unjustified and against the natural of justice.*

5.At the out set, the Id AR for the assessee has submitted that the assessee used to take adjournments and did not file any written

submissions before Id CIT(A). The assessee could not attend the office of the Id CIT(A) because of certain reasons and requested the Bench to remit the matter back to the file of the Id CIT(A) for fresh adjudication. Even Id DR for the Revenue did not object about the propositions of the Id AR for the assessee.

6. Having heard both the parties and perused the material available on record, we noticed that assessee used to take adjournments during the appellate proceedings before the Id CIT(A), therefore, it can not be presumed that assessee did not want to pursue the appeal. Since the rights and duties of the assessee has not been determined by the Id CIT(A) therefore, we are of the view to remit the case back to the file of the Id CIT(A) for adjudication of the issue afresh.

8. In the result, the appeal filed by the assessee, is allowed for statistical purposes.

Order pronounced in the open court on this 21/04/2017.

Sd/-
(S.S.VISWANETHRA RAVI)

न्यायिक सदस्य / JUDICIAL MEMBER

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

लेखा सदस्य / ACCOUNTANT MEMBER

कोलकाता /Kolkata; दिनांक Dated 21/04/2017

प्रकाश मिश्रा/Prakash Mishra,Sr.PS.

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

1. अपीलार्थी / The Appellant- *M/s Stainless International (P) Ltd.*
2. प्रत्यर्थी / The Respondent.-ITO Wd-5(1), Kolkata
3. आयकर आयुक्त(अपील) / The CIT(A), Kolkata.
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY
ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक
पंजीकार

(Asstt. Registrar)

आयकर अपीलीय अधिकरण, कोलकाता / ITAT, Kolkata