

आयकर अपीलिय अधिकरण, मुंबई न्यायपीठ , मुंबई ।

IN THE INCOME TAX APPELLATE TRIBUNAL "E" BENCH, MUMBAI

BEFORE SHRI C.N. PRASAD, JUDICIAL MEMBER AND

SHRI RAJESH KUMAR, ACCOUNTANT MEMBER

आयकर अपील सं/ I.TA No.1075/Mum/2011

(निर्धारण वर्ष / Assessment Year: 2002-03

M/s. Spectrum Coal and Power Ltd., (Formerly M/s. ST-CLI Coal Washeries Ltd), MCH No. 6-3-1089/1/1, Flat No. 203, Pavani Avenue, Rajbhavan Road, Somajiguda, Hyderabad-500 082 Andhra Pradesh	बनाम/ Vs.	The ACIT, Circle 1(3), Aayakar Bhavan, Mumbai-400 020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AABCS 9860J		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
अपीलार्थी ओर से/ Appellant by:		Shri Salil Kapoor
प्रत्यर्थी की ओर से/Respondent by:		Shri Love Kumar

सुनवाई की तारीख / Date of Hearing :21.01.2016

घोषणा की तारीख /Date of Pronouncement :29 .01.2016

आदेश / ORDER

PER C.N. PRASAD, JM:

This appeal by the assessee is preferred against the order of the Ld. CIT(A)-2, Mumbai dated 29.11.2010 pertaining to assessment year 2002-03.

2. The first grievance of the assessee in its appeal is that the Ld. CIT(A) erred in law and on facts in not appreciating the reason furnished by the appellant for signing the appeal memo by the Director are genuine and bonafide. He further contended that the Ld. CIT(A) erred in deciding the appeal on the basis of technical objections raised rather than deciding the appeal on merits.

3. At the very outset, the Ld. Counsel for the assessee submits that the Ld. CIT(A) dismissed the appeal of the assessee on the technical ground holding that Form No. 35 in the grounds of appeal is not valid for the reason that they were signed by the Director instead of Managing Director of the assessee company. The Ld. Counsel for the assessee submits that the Ld. CIT(A) is not justified by dismissing the appeal of the assessee on technical ground holding that the Managing Director has not signed the appeal memo on the grounds of appeal therefore the appeal is not a valid appeal.

3.1. On identical situation in assessee's own case the Tribunal for the assessment years 2000-01, 2001-02 and 2002-03 in ITA Nos. 3778, 3779 and 3780 of 2010 dated 21.11.2011 set aside the order passed by the Ld. CIT(A) and remanded back the matter to his file to decide the appeal on merit. Copy of the order is placed on record.

3.2. On careful consideration of the Co-ordinate Bench order in assessee's own case we find that the Co-ordinate Bench following the decision of the Jurisdictional High Court in the case of Tilaknagar Industries Ltd remitted the matter to the file of the Ld. CIT(A) to decide the appeal on merit. The Co-ordinate Bench of the Tribunal while holding so held as under:

“On appeal before the ld. CIT(A), the ld. CIT(A) observed that the form of appeal, statement of facts and grounds of appeal revealed that the same have been signed and verified by the director of the company, whereas as per Rule 45(2) and section 140(c), the same has to be signed by the Managing Director of the company. Accordingly, a show cause notice was given by the ld. CIT(A) ITA Nos. 3778 to 3780/M/2010 Spectrum Coal & Power Ltd. 3 proposing to treat the appeal as invalid. In response, the assessee filed detailed written submissions. It was, inter alia, submitted that the Mg. Director of the company was travelling to various sites of the company and hence he could not sign the appeal. In support, reliance was also placed on the decision in the case of Prime Securities Ltd. reported in 28 DTR 119 (Bom) and Remfry & Sons reported in 276 ITR 1 (Del). The ld. CIT(A), while distinguishing the decisions relied on by the assessee, did not accept the assessee’s explanation. He observed that what the assessee is stating is a matter of ‘convenience’ which can neither supersede nor bypass the requirement of law. Firstly, if this was a bona fide contention, this fact ought to have been mentioned in the appeal documents, which is not there, therefore, the contention is an afterthought. Moreover, no evidence of travelling of Mg. Director has been filed. Whether on the date on which the verification has been done, the Mg. Director was not in town ought to have been brought on record. Even if the Mg. Director was not in town, at this point of time, the assessee had sufficient time still left for filing the appeal i.e. 7 days, therefore, the “unavoidable reasons” mentioned in sec. 140 of the Act is not attracted and, accordingly, he treated the appeal as not a valid appeal and dismissed the same.

Being aggrieved by the order of the ld. CIT(A), the assessee is in appeal before us challenging in all the grounds the validity of the order passed by the ld. CIT(A) in holding the appeal to be non-est and not valid without providing sufficient opportunity of being heard to the assessee and sustenance of penalty imposed by the AO.

At the time of hearing, the ld. counsel for the assessee, at the outset, submits that on similar facts and circumstances of the case, the Hon’ble ITA Nos. 3778 to 3780/M/2010 Spectrum Coal & Power Ltd. 4 jurisdictional High Court in the case of Tilaknagar Industries Ltd. vs. CIT & Ors. [Writ Petition No.(L) 2792 &

2793/2010 dated 14-12-2010], has quashed the order of the ld. CIT(A) and remanded back the appeal to the file of the ld. CIT(A) for decision on merits in accordance with law. He also placed on record copy of the said judgment. He further submits that in this case the date of hearing before the ld. CIT(A) was fixed for 03-02-2010. The assessee sought adjournment on the ground that the quantum appeals against the assessment order u/s.143(3) are pending before the ld. CIT(A). Therefore, it was requested to keep the hearing of the appeal in abeyance till the quantum appeals are disposed of. He further submits that as per provisions of sec. 140 of the Act, in case if the Mg. Director of the company is not able to sign the appeal documents, it can be signed by any director thereof. He, therefore, submits that there is no default on the part of the assessee and, therefore, the order passed by the ld. CIT(A) be set aside and the matter may be restored back to his file to decide the appeal afresh.

On the other hand, the ld. D.R. supports the order of the ld. CIT(A).

We have carefully considered the submissions of the rival parties and perused the material available on record. We find that the facts are not in dispute inasmuch as it is also not in dispute that before the ld. CIT(A) the assessee in support has also relied on the decision of the Hon'ble jurisdictional High Court in the case of Prime Securities Ltd. (supra). The ld. CIT(A), while distinguishing the decision, held in para 14 of his order that the decision of Hon'ble Bombay High Court requires a fresh look in a proper perspective. In this regard, it is necessary to take note of the decision of Hon'ble Madhya Pradesh High Court in the case of ITA Nos. 3778 to 3780/M/2010 Spectrum Coal & Power Ltd. 5 National Textile Corporation Ltd. (M.P.) vs. CIT (2011) 338 ITR 371 (M.P.) wherein it has been held (headnote) :

“Held accordingly, that the Tribunal had no jurisdiction to comment upon the decision of the jurisdictional High Court and in particular the manner in which it was rendered nor had jurisdiction to ignore the decision. It was for the reason that, firstly, it was a decision rendered by the jurisdictional High Court. Secondly, the Tribunal was functioning in the same State and subordinate to the High Court. Thirdly, the Tribunal had no jurisdiction to hold that

the decision of the High Court was per incuriam. Though the Tribunal did not say so in so many words in effect it amounted to such a declaration. Fourthly, the Tribunal had also no jurisdiction to find fault with the decision of the jurisdictional High Court so as to avoid its binding effect.”

We further find that the issue before us is squarely covered by the decision of the Hon’ble jurisdictional High Court in the case of Tilaknagar Industries Ltd. (supra) wherein it has been observed and held as under :

“1. These two petitions are filed against the orders passed by the Commissioner of Income Tax (Appeals) whereby the appeals filed by the petitioner against the regular assessment orders have been dismissed on the ground that the appeal memo was not signed by the authorized officer of the petitioner-company.

2. This Court in the case of Prime Securities Limited v/s. Varinder Mehta, Assistant Commissioner of Income-tax reported in (2009) 317 ITR 27 (Bom) and Commissioner of Customs v/s. Cannon Shipping Company Private Limited reported in 250 ITR 347 has held that signing of the appeal memo by a person not authorized is only an irregularity and the same can be rectified. Although, the Commissioner of Income Tax (Appeals) has tried to distinguish the judgment of this Court in the case of Prime Securities Limited (supra), we see no merit in such distinction sought to be made. In this view of the matter, the learned counsel for the Revenue fairly states that the impugned orders be quashed and set aside and the appeals be remanded back to the Commissioner of Income Tax (Appeals) on merits in accordance with law.”

In the absence of any distinguishing feature brought on record by the Revenue, we, respectfully following the decision of the Hon’ble jurisdictional High Court (supra) and the other decisions cited therein, set aside the order passed by the ld. CIT(A) and remand back the matter to his file to decide the appeal on merits in accordance with law

after providing reasonable opportunity of being heard to the assessee. The grounds taken by the assessee are, therefore, partly allowed for statistical purposes”.

Respectfully following the said order of the Tribunal in assessee's own case, we set aside the order of the Ld. CIT(A) and restore the matter back to the file of the Ld. CIT(A) to decide the appeal on merits in accordance with law after providing adequate opportunity of being heard to the assessee.

4. In the result, the appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court on 29th January, 2016.

Sd/-

Sd/-

(RAJESH KUMAR)

(C.N. PRASAD)

लेखा सदस्य / ACCOUNTANT MEMBER न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 29th January, 2016

व.नि.स./ Rj , Sr. PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण,
मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार

(Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai