

IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH : KOLKATA

[Before Hon'ble Sri Aby T.Varkey, JM & Shri Waseem Ahmed, AM]

I.T.A No.142/Kol/2015

Assessment Year : 2007-08

I.T.O., Ward-32(1)
Kolkata

-vs.-

M/s. Kaycee Trading Co.
Kolkata

[PAN : AADFK 1092 P]

(Appellant)

(Respondent)

For the Appellant : None

For the Respondent : None

Date of Hearing : 09.12.2016.

Date of Pronouncement : 28.12.2016.

ORDER

Per Aby T.Varkey, JM

This is an appeal preferred by the Revenue against the order of CIT(A)-9, Kolkata dated 10.11.2014 for AY 2007-08.

2. Ground Nos.1,2 and 3 raised by the revenue are in respect of the order passed by the Id. CIT(A) holding that the assessment order passed by the AO is with out jurisdiction.

3. The brief facts of the case is that the assessee filed return of income for A.Y.2007-08 on 13.11.2007 disclosing a loss of Rs.8,72,967/-. Later on the case was selected for scrutiny. The case was assessed u/s 144 of the Act on a total income of Rs.1,23,86,720/- on 31.12.2009 by Addl. CIT , Range-32. The AO passed the order by assuming the gross profit at 8% . Being aggrieved by the order of AO the assessee preferred appeal before CIT(A), who disposed off the appeal directing the AO to estimate the gross profit at 4%. On appeal against the order the Tribunal Kolkata bench set aside the orders of the authorities below and restored the issue to the file of AO with the direction that he shall decide the same afresh after affording opportunity to the assessee of being heard.

Thereafter we take note that the impugned assessment order has been passed by ITO-Ward-32(1), Kolkata after the remand order passed by the Tribunal. Notice u/s 143(2) and 142(1) was issued by ITO-Wd-32(1), Kolkata and assessment was completed by the said ITO by order dated 04.02.2013 which was challenged by the assessee before the Id. CIT(A) wherein the assessee raised the jurisdiction of ITO-Ward-32(1) which was allowed by the Id. CIT(A). The action of the Id.CIT(A) has been challenged by the revenue before us.

4. None appeared on behalf of both the parties. However, after going through the records and appeal filed we are of the opinion that we can dispose of this appeal with the help of the records which are before us.

5. We have gone through the records carefully and have gone through the orders passed by the AO as well as the impugned order of Id.CIT(A). The Id. CIT(A) has taken note of the fact that the CIT-11, Kolkata u/s 124(4)(b) of the Act by an order dated 14.09.2009 by which he assigned the powers and functions conferred on the AO under the Act of the assessee's case to Addl. CIT, Range-32, Kolkata. The Id. CIT(A) also took note of the fact that the Addl. CIT, Range-32 while passing the assessment order dated 31.12.2009 has specifically mentioned the aforesaid fact that CIT-11, Kolkata by order dated 14.09.2009 has empowered him the jurisdiction to pass the assessment of the assessee for A.Y.2007-08. Empowered with the said order of the CIT-11, Kolkata, only the Addl. CIT, Range-32 passed the assessment order for A.Y.2007-08 in the case of the assessee by order dated 31.12.2009. Thereafter the Id. CIT(A) noticed that there was nothing on record to show that the power to assess the assessee for A.Y.2007-08 has been withdrawn from the Addl. CIT, Range-32 for A.Y.2007-08. Since there was no record to suggest that the CIT has withdrawn the jurisdiction of the assessee for the A.Y.2007-08 from the Addl. CIT, Range-32 for the assessment year in question, the Id. CIT(A) came to the conclusion that ITO-Wd.32(1) cannot usurp the jurisdiction when it

has been taken away specifically from him i.e. ITO, Ward-32 and entrusted it to the Addl. CIT, Range-32 by CIT u/s 120 of the Act. In such a scenario, we do not find any infirmity in the order passed by the ld. CIT(A). From a perusal of the grounds of appeal we do not find that the revenue's ground does not suggest in any manner that the CIT-XI, Kolkata has withdrawn the order entrusting the jurisdiction from the ITO to the Addl. CIT, Range-32. So without being divested the jurisdiction from Addl.CIT,Range-32 to assess the assessee for A.Y.2007-08 and grant him the jurisdiction back to ITO, Ward-32(1), he has no jurisdiction to assess the assessee for A.Y.2007-08. So we do not find any merit in the appeal preferred by the revenue. Therefore we confirm the order of ld. CIT(A) and dismiss the appeal of the revenue.

6. In the result the appeal of the revenue is dismissed.

Order pronounced in the Court on 28.12.2016.

Sd/-
[Waseem Ahmed]
Accountant Member

Sd/-
[A.T.Varkey]
Judicial Member

Dated : 28.12.2016.

[RG PS]

Copy of the order forwarded to:

- 1.M/s. Kaycee Trading Co., 31, Kohinoor Building, 105, Park Street, Kolkata-700016.
2. I.T.O., Ward-32(1), Kolkata. .
- 3..CIT(A)-9, Kolkata 4. CIT –XI, Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By Order

Asstt.Registrar, ITAT, Kolkata Benches

