

आयकर अपीलिय अधीकरण, न्यायपीठ – “B” कोलकाता,
*IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH “B” KOLKATA*

Before **Shri Aby.T Varkey, Judicial Member** and
Shri Waseem Ahmed, Accountant Member

ITA No.373/Kol/2015
Assessment Year :2011-12

Income Tax Officer, Ward-2(3), Aayakar Bhwawan, paribahan Nagar, Matigara, Siliguri Pin-734010	V/s.	M/s S.D. Enterprise, Nazrul Sarani, Ashrampara, Siliguri, [PAN No.ABFFS 6229 P]
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	Shri Rajendra Prasad, Addl. CIT-DR
प्रत्यर्थी की ओर से/By Respondent	Shri Sunil Surana, FCA
सुनवाई की तारीख/Date of Hearing	03-08-2017
घोषणा की तारीख/Date of Pronouncement	15-09-2017

आदेश /O R D E R

PER Waseem Ahmed, Accountant Member:-

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals), Siliguri dated 16.01.2015. Assessment was framed by ITO Ward-2(3), Siliguri u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') vide her order dated 30.03.2014 for assessment year 2011-12. Grounds raised by Revenue per its appeal are as under:-

“1. That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law in admitting fresh evidence at the appellate stage, in the form of certificate u/s. 197 in respect of M/s Adecco Flexione Work Force Solution, without informing the AO, as is required as per the provisions of Rule 46A(3) of the Income Tax Rules, 1962.

2. That on the facts and in the circumstances of the case, the order of the Ld. CIT(A) is bad in law inasmuch as the directions issued to the Assessing Officer to make further verifications is in excess of the powers granted u/s. 251(1) id the IT Act, 1961, as has also been pointed out in the decision of the jurisdictional ITAT in **ITA No.994(Kol) of 2009**, in the case of *Visura Trading & Investment (I) Lt. Kolkata Vs. ITO, Ward-9(2) Kolkata*, which states-

'There is no dispute to the fact that as per sec. 251(1) of the Act, the Id. CIT(A) has no power to set aside any matter to the file of the Id. AO for fresh verification and adjudication.'

3. That the appellant craves leave to add, amend or alter the grounds of appeal, if any."

Shri Rajendra Prasad, Ld. Departmental Representative represented on behalf of Revenue and Shri Sunil Surana, Ld. Authorized Representative appeared on behalf of assessee.

2. At the outset, Ld. Authorized Representative for assessee submitted that the Revenue has raised only two issues as detailed under:-

i) Ld. CIT(A) has deleted the addition made by the Assessing Officer on the basis of additional evidence which are admitted in contravention to the provision of Rule 46A(3) of the Income Tax Rules, 1962.

ii) Ld. CIT(A) erred in setting aside the order of AO for fresh verification though Ld. CIT(A) had no power under the provision of Section 251(1) of the Act

3. Ld. AR further submitted that the addition was made by AO due to non-deduction of Tax Deducted at Source (TDS) on the payment of ₹5,69,672/- only to M/s Adecco Flexione Work Force Solution (AFWFS for short). The same was deleted by Ld. CIT(A) on the ground that there was certificate issued u/s 197 of the Act for non-deduction of TDS. For this amount of deletion Revenue has filed an appeal before us.

4. The Id. AR further submitted that tax effect of this addition is below the prescribed limit as per Circular No. 21 of 2015 issued by CBDT dated 10.12.2015.

Similarly for the other addition, the Ld. AR further submitted that the addition was made by the AO on account of cessation of liability shown by the

assessee for Rs.9,22,936/- in respect of three parties as discussed in assessment order.

Therefore, the addition was made by the AO for the above two matters. Against the above additions the assessee filed appeal to Id. CIT(A) who deleted the first addition and for 2nd addition, he has restored back the matter to AO for fresh adjudication after necessary verification. Accordingly the Id. AR submitted that there is no tax effect arising from the order of Id. CIT(A) in respect of the deletion of 2nd addition made by the AO.

As such it was submitted by the Id. AR that on the basis of above grounds of appeal and in view of Circular No. 21 of 2015 dated 10.12.2015 issued by CBDT the appeal filed by Revenue is not maintainable.

On the contrary, Ld. DR submitted that the addition made by the AO in ground No.2 was not actually deleted by Ld. CIT(A) but remitted back to the file of AO for fresh verification. Therefore, as such, it cannot be concluded that there is no tax liability arising out of ground No.2. The Id. DR vehemently supported the order of AO.

5. We have heard the rival contentions of both the parties and perused the material available on record. At the outset, we were convinced with the argument placed by Ld. AR that the appeal filed by Revenue is not maintainable due to low tax effect and accordingly we were of the considered opinion to dismiss the appeal of Revenue due to tax effect.

But after perusal of materials available on record we find force in the argument of Ld. DR which states that it cannot be concluded that there is no tax liability arising out of ground No.2. It is because the Id. CIT(A) has not deleted the addition made by the AO but directed the AO to delete the same after necessary verification. As such without the verification of the AO it cannot be assumed that the addition has been deleted by the Id. CIT(A). Thus, in totality the tax effect exceeds more than Rs. 10 lacs. Therefore, we are of the view that it is not hit the impugned circular of CBDT No. 21 of 2015. As we find the

other addition made by the AO had already been restored by Ld. CIT(A) to the file of AO, We are also incline to restore the first addition to the file of AO for fresh adjudication in accordance with law. As both the issues raised by Revenue are restored back to the file of AO for fresh adjudication in accordance with law. Hence, both the grounds of Revenue's appeal are allowed for statistical purpose.

6. In the result, for statistical purpose, the appeal of Revenue is treated as allowed.

Order pronounced in the open court 15/09/2017

Sd/-
(Aby. T. Varkey)
(Judicial Member)
Kolkata,

Sd/-
(Waseem Ahmed)
(Accountant Member)

*Dkp

दिनांक:- 15/09/2017 कोलकाता ।

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-ITO Ward, 2(3), Aayaka Bhawan, Paribahan Nagar, Matigara Siliguri, Pin 734010
2. प्रत्यर्थी/Respondent-M/s S.D/. Enterprise, Nazrul Sarani, Ashrampara, Siliguri
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

Sr. Private Secretary, Head of
Office/DDO
आयकर अपीलीय अधिकरण,
कोलकाता ।