

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.1234-1235/Kol/2015
Assessment Years :2010-11 & 2011-12

DCIT, Circle-3(1),P-7 Chowringhee Square, Aaykar Bhawan, 4 th Floor, Room No.19, Kolkata-69	V/s.	M/s R.P. Techvision India Ltd., 20/1C, Lal Bazar Street, Kolkata-01 [PAN No.AADCR 0950 Q]
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

आवेदक की ओर से/By Assessee	None
राजस्व की ओर से/By Respondent	Shri G. Hangshing, CIT-DR
सुनवाई की तारीख/Date of Hearing	11-09-2017
घोषणा की तारीख/Date of Pronouncement	22-09-2017

आदेश /ORDER

PER BENCH:-

Both appeals by the Revenue are directed against the different orders of Commissioner of Income Tax (Appeals)-2 of even date i.e. on 24.06.2015. Assessments were framed by DCIT-Circle-4/JCIT Range-4, Kolkata u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') vide their orders dated 31.01.202013 & 13.03.2014 for assessment years 2010-11 & 2011-12.

2. Both appeals were late by just 2 days for which separate petition praying condonation of delay has been filed by the Department. Ld. DR referring the reasons stated in affidavits dated 14.07.2015 has requested for condonation of delay. We therefore condone the delay and proceed to dispose

off the appeals on merit. Common issues are raised in Revenue's appeals except the amount involved, therefore we are taking the facts of the case in A.Y. 2010-11 in **ITA No.1234/Kol/2015** as a lead case for the sake of convenience and accordingly deem fit to pass a consolidate order.

3. At the outset, it was observed that neither anybody appeared from the side of assessee nor its authorized representative as well as no adjournment petition was filed. However, on perusal of the grounds of appeal raised by Revenue, it was found that Revenue has challenged the validity of the order passed by Ld. CIT(A) on the ground that no opportunity was given to Assessing Officer in pursuance to the provision of Section 250(2) of the Act. Considering the grounds of appeals we opined that the technical issue raised by Revenue can be disposed of without appearance of assessee or its authorized representative. Therefore, we decided to proceed to hear the appeal with Id. DR appearing on behalf of Revenue but without the presence of assessee or its authorized representative.

First we take up Revenue's appeal in ITA No.1234/Kol/2015 for A.Y.10-11.

4. Grounds raised by Revenue per its appeal as under:-

"1. The CIT(A) has not given the notice of hearing/opportunity of being heard to the Assessing Officer as required in provisions of sec. 250(2), therefore the order passed by the CIT(A) is void.

2.The CIT(A) passed the order after obtaining fresh and additional evidences in contravention to the provision of Rule-46A which s against the principle of natural justice.

3. On the facts and circumstances of the case the Ld. CIT(A) has erred in allowing deduction of Rs.4,60,24,923/- as Revenue expenditure u/s. 28 of Income Tax Act, 1961 though this payment was made for purchase of company as held by Supreme Court vide order dated 4th May, 2010(copy enclosed).

4. That the appellant craves leave to add, alter, amend or modify the grounds of appeal during the course of hearing proceedings of this case."

5. First issue raised by Revenue in this appeal is that Ld. CIT(A) erred in not providing opportunity of being heard to Assessing Officer as per the provision of Section 250(2)of the Act.

6. At the outset, Ld. DR has brought to our notice that Ld. CIT(A) has passed order without affording reasonable opportunity of being heard to the Assessing Officer in terms of provision of Section 250(2) of the Act. The Ld. DR further drew our attention on provisions of law which reads as under :

Procedure in appeal.

⁷⁷250. (1) The ⁷⁸[* *] ⁷⁹[Commissioner (Appeals)] shall fix a day and place for the hearing of the appeal, and shall give notice of the same to the appellant and to the ⁸⁰[Assessing] Officer against whose order the appeal is preferred.*

(2) The following shall have the right to be heard at the hearing of the appeal—

- (a) the appellant, either in person or by an authorised representative;*
- (b) the ⁸⁰[Assessing] Officer, either in person or by a representative.*

In view of above, Ld. DR submitted that the matter should be restored back to the file of Ld. CIT(A) for fresh adjudication after providing reasonable opportunity of being heard to the Assessing Officer.

7. We have heard Ld. DR and perused the material available on record. As per the provision of Section 250(2) of the Act, it was mandatory on the part of Ld. CIT(A) to afford an opportunity of being heard to AO before passing the appellate order. In the instant case, we observe that Ld. CIT(A) has violated the provision of Section 250(2) of the Act which amounts to the breach of principle of natural justice. Hence, in our considered view Ld. CIT(A) before passing the impugned order should have afforded an opportunity of being heard to the AO. Therefore, in the interest of natural justice and fair play we are inclined to restore the matter back to the file of Ld. CIT(A) for fresh adjudication in accordance with law. Needless to say that AO should cooperate in the appellate proceedings as and when called for by Ld. CIT(A). Hence, this ground of Revenue's appeal is allowed for statistical purpose.

Now coming to the ITA No. 1235/Kol/2015 for A.Y.11-12.

8. The facts and issue are same as in **ITA No.1234/Kol/2015** of Revenue's appeal, therefore following our decision on this issue as embodied

in para-6 & 7 of this order, the appeal of Revenue is allowed for statistical purpose.

9. In combine result, for statistical purpose, the appeals of Revenue are treated as allowed.

Order pronounced in the open court 22/09/2017

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

Sd/-
(Waseem Ahmed)
(Accountant Member)

*Dkp

दिनांक:- 22/09/2017 कोलकाता ।

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

1. आवेदक/Assessee-M/s R.P.Techvision India Ltd., 20/1C, Lal Bazar Steet,Kolkata-001
2. राजस्व/Revenue-DCIT, Circle-3(1), P-7, Chowringhee Sq. Aayakar Bhawan, 4th Fl, Kol-69
3. संबंधित आयकर आयुक्त / Concerned CIT Kolkata
4. आयकर आयुक्त- अपील / CIT (A) Kolkata
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 ।