

IN THE INCOME TAX APPELLATE TRIBUNAL

KOLKATA BENCH 'C', KOLKATA

(Before Shri P. M. Jagtap, A.M. & Shri S.S. Viswanethra Ravi, J.M.)

ITA No. 1968/KOL/2013

Assessment Year : 1999-2000

D.C.I.T. Cir-8, Kolkata P-7, Chowringhee Square, 5 th Floor, Aayakar Bhawan, Kolkata - 700069	Vs	M/s. Shree Krishna Fodder Mills Pvt. Ltd. 108, Elliot Road, Kolkata - 700016 PAN No. AADCS2476A
(APPELLANT)		(RESPONDENT)

Revenue by : Shri Kalyan Nath, Addl. CIT. Sr. DR

Assessee by : None (AR)

Date of Hearing : 03.07.2017		Date of Pronouncement : 07.07.2017
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ORDER

Shri P.M.Jagtap, A.M.

This appeal is preferred by the revenue against the order of Id. CIT(Appeals) - VIII Kolkata dated 26.03.2013 and in the solitary ground raised therein, the revenue has challenged the action of the Ld. CIT(A) in deleting the addition of Rs. 60,53,123/- made by the AO on account of increase in sundry creditors, advances from customers and share capital.

2. The assessee in the present case is a company which is engaged in poultry business. The poultry business in the State of West Bengal was badly affected by Bird Flue during the relevant period as a result of which the assessee company suffered huge losses. In the return of income filed for the

year under consideration, total income was declared by the assessee at Nil. In the assessment completed vide an order dated 27.03.2002 under certain controversial circumstances, the total income of the assessee was determined by the AO at Rs. 1,40,51,035/-. The income so determined was comprised of a sum of Rs. 74,79,963/- assessed in the hands of the assessee on protective basis while the balance amount assessed on substantive basis was inclusive of the addition of Rs. 60,53,123/- made by the AO on account of increase in sundry creditors, advances from customers and share capital by treating the same as unexplained. Against the order of the AO dated 27.03.2002, an appeal was preferred by the assessee before the Ld. CIT(A) who allowed a substantial relief to the assessee. On further appeal filed by the department, the Tribunal set aside the order of the CIT(A) and restored the matter to the file of the AO with the direction to make the assessment afresh after taking into consideration the submissions advanced by the assessee vide its letter dated 22.03.2002 and after giving the assessee an opportunity being heard. As per the direction to the Tribunal, the fresh assessment proceedings were initiated by the AO and since there was no compliance on the part of the assessee to the notices issued by him during the course of the proceedings, order under section 254/251/144 dated 21.12.2009 was passed by the AO determining the total income of the assessee at the same figure of Rs. 1,40,51,035/-.

3. Against the order passed by the AO under section 254/251/144, an appeal was preferred by the assessee before the Ld.CIT(A). During the course of appellate proceedings before the Ld. CIT(A), it was submitted on behalf of the assessee that the increase in sundry creditors, advances and share capital was duly explained before the AO in writing vide letter dated 23.03.2002, but the same was not taken into consideration by the AO. The assessee also submitted a turnover chart along with increased value of sundry creditors and advances for the last two years to show that in spite of increase of turnover of 46%, the increase in creditors was only 2%. The assessee also furnished ledger copies of sundry creditors, advances and increased share capital for the year. Reliance was also placed on behalf of the assessee on the decision of Hon'ble Delhi High Court in the case of CIT vs Stellar Investment Ltd. (251 ITR 263) to contend that even if the subscribed share capital were not genuine, the amount could not be regarded as its undisclosed income.

4. All the submissions made by the assessee were forwarded by the Ld. CIT(A) to the AO seeking the later's comments. The Assessing Officer, however, did not offer his comments within a period of about one month and therefore reminder was sent by the Ld. CIT(A) on 18.03.2013 with the direction to the AO to submit his remand report by 25.03.2013. However, the AO did not offer any comments on the merit of the issues and sought further time to submit his remand report. Keeping in view this non-compliance on the

part of the AO, the Ld. CIT(A) proceeded to decide the issue on the basis of material available on record and deleted the addition of Rs. 60,53,123/- made by the AO on account of increase in sundry creditors, advances and share capital for the following reasons given in paragraph no. 5.1.3:

“I have carefully gone through the argument & submission put forth on behalf of the appellant along with supporting details/documents, perused the facts of the case including the observation of the AO in the assessment order and other materials brought on records. Keeping in mind the pressure of disposing off the High Demand Appeal and considering the entire facts of the case, I am left with no option other than to dispose off this appeal. I find that there is no ground with the AO to make addition in respect of unexplained increase in share capital, sundry creditors and advances from customers of the year as the AO himself explained in his order that addition is based on the document i.e. copy of account submitted and fund flow available. The copy of appellant’s letter dated 22.03.2002 which were submitted before the AO on 26.03.2002 shows that the appellant has given full information about the financial data and transactions of the above said accounts made during the year. As per point no. 4 of the letter dated 22.03.02 it is clearly mentioned that the appellant has enclosed the details of all particulars in support of increment of said each of three accounts and the said matters have also been requested by the appellant to verify by the then AO from the respective parties of each of said three accounts. Therefore, it is found that the initial burden/prima facie ground to prove the ownership and genuineness of the transactions is fulfilled by the appellant. On perusal of the Audited Accounts of the appellant, I agree with the contention of the AR that the increase in turnover of the year in relation to the earlier year is about 46% more and in spite of this, the increase in sundry creditors, advances and share capital is negligible.”

Aggrieved by the order of the Ld. CIT, the revenue has preferred this appeal before the Tribunal.

5. At the outset, it is noted that there is a delay of one day on the part of the revenue in filing this appeal before the Tribunal. In this regard, a petition has been filed by the revenue seeking condonation of the said delay and keeping in view the reasons given therein, we are satisfied that there was a sufficient cause for the delay of one day on the part of the revenue in filing this appeal before the Tribunal. We have, therefore, condoned the said delay and now proceed to dispose off the appeal of the revenue on merit.

6. At the time of hearing, none has appeared on behalf of the assessee nor any objection seeking adjournment has been filed. This appeal of the revenue is therefore, being disposed off ex-parte qua, the respondent assessee after hearing the argument of the Ld. DR and perusing the relevant material available on record. The limited contention raised by the Ld. DR before us is that no proper and sufficient opportunity was afforded by the Ld. CIT(A) to the AO to offer his comments on the submissions made by the assessee while allowing the relief to the assessee by deleting the addition made on account of increase in sundry creditors, advances and share capital. He has contended that there is thus a clear violation of principles of natural justice by the Ld. CIT(A) and the matter should be send back to the AO for giving the opportunity to the AO to verify/examine the submissions made by the assessee. We are unable to accept this contention of the Ld. DR. It is observed that its submission in writing were made by the assessee on the issue under

consideration vide letter dated 22.03.2002 during the course of original assessment proceedings itself but the same were not taken into consideration by the AO while completing the assessment originally vide order dated 27.03.2002. Taking note of this factual position, the matter was restored by the Tribunal to the file of the AO with a specific direction to pass a fresh order after taking into consideration, the said submissions advanced by the assessee vide letter dated 2.03.2002. However, even in the fresh assessment made by the AO vide order dated 21.12.2009, the said submissions were not taken into consideration and the assessment was completed by him determining the total income of the assessee at the same figure of Rs. 1,40,51,035/-. When the assessee went in appeal once again before the Ld. CIT(A) against the order of the AO dated 21.09.2009, one more opportunity was afforded by the Ld. CIT(A) to the AO to give his comments on the submissions made by the assessee vide letter dated 22.03.2002 as well as on other details and documents furnished by the assessee. The AO however, did not avail this opportunity in spite of reminder sent by the Ld. CIT(A). Keeping in view all these facts and circumstances of the case, we are of the view that the Assessing Officer has already been given a proper and sufficient opportunity to verify/examine the submissions of the assessee and there is no violation of Rule 46A of Income Tax Rules or the principles of natural justice by the Ld. CIT(A) while giving relief to the assessee. As regards the merit of the issue, the Ld. DR has not advanced any material argument in support of the revenue's

case. Even otherwise, we find that the Ld. CIT(A) has given relief to the assessee on the issue after taking into consideration all the details and documents placed on record by the assessee and there is no justifiable reason to interfere with his impugned order giving relief to the assessee on the issue. We, therefore, uphold the impugned order of the Ld. CIT(A) and dismiss the appeal filed by the revenue.

7. In the result, the appeal filed by the revenue is dismissed.

Order Pronounced in the Open Court on 7th July, 2017

Sd/-
(S.S. Viswanethra Ravi)
JUDICIAL MEMBER

Sd/-
(P.M.Jagtap)
ACCOUNTANT MEMBER

Dated: 07/07/2017
Biswajit

Copy of order forwarded to:

- 1 M/s. Shree Krishna Fodder Mills Pvt. Ltd. 108, Elliot Road, Kolkata - 700016
- 2 D.C.I.T. Cir-8, Kolkata, P-7, Chowringhee Square, 5th Floor, Aayakar Bhawan, Kolkata – 700069
- 3 The CIT(A) -
- 4 The CIT -
- 5 DR

True Copy,

By order,

Sr. P.S. / H.O.O.
ITAT, Kolkata