

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "B" BENCH, AHMEDABAD**

[Coram: Pramod Kumar AM and Rajpal Yadav JM]

ITA No. 1073/Ahd/2014
Assessment Year: 2002-03

M/s. Artee Roadways**Appellant**
*Nr. Tulsi Cinema, Amul Dairy Road,
Anand – 388 001
[PAN : AADFA 1735 F]*

Vs.

Income-Tax Officer**Respondent**
Ward-1, Anand

Appearances by:

Aseem Thakkar *for the appellant*

Mudit Nagpal *for the respondent*

Date of concluding the hearing : 25.10.2017

Date of pronouncing the order : 27.10.2017

O R D E R

Per Pramod Kumar AM:

1. By way of this appeal, the assessee appellant has challenged the correctness of the order dated 05.12.2013 passed by the CIT(A)-IV, Baroda in the matter of assessment under Section 143(3) of the Income-tax Act, 1961, for the assessment year 2002-03.

2. The appeal is time barred by 23 days, but the assessee has moved a petition seeking condonation of delay, on which we have heard both the parties. We have noted that the assessee was traversing through a difficult financial period and facing recovery suits from the banks and financial institutions. We have also noted that it was due to this difficult patch of time and the problems being faced by the assessee in day to day operations that the delay in filing of the appeal is stated to have been caused. Having considered this explanation and having heard learned Departmental Representative, we are inclined to condone the delay and proceed to take up the matter on merits. Accordingly, the delay is condoned.

3. On merits, the assessee has raised following grievances:--

"1. The learned Commissioner of Income Tax (Appeals) has erred in confirming the disallowance of Rs.11,45,226/- of Tyre expenses.

2. The learned Commissioner of Income Tax (Appeals) ought to have considered and admitted the additional evidences furnished by the appellant during the course of Appellate hearing in respect of Tyre expenses.

3. The learned Commissioner of Income Tax (Appeals) has erred in confirming the disallowance of Rs.5,29,235/- of the truck repairing expenses."

3. When we took up the matter for hearing on merits, learned counsel for the assessee fairly invited our attention to the fact that the additional evidences filed by the appellant during the course of appellate hearing were not accepted by the CIT(A) and it is primarily for this reason that the issue has been decided against the assessee. He also submitted that, as evident from the observations made by the Id. CIT(A) at page no. 21 of the impugned order, the additional evidences were rejected because the proper procedure for admission of additional evidences was not complied with by the assessee. In view of this position, learned counsel suggests that the matter may be remitted to the file of the CIT(A) for adjudication on merits after admission of additional evidences. Learned counsel also points out that in case there were some defects, as indeed there were, with respect to procedural aspects, the CIT(A) ought to have confronted the appellant with the same, rather than dismissing the application for admission of additional evidences in violation of principle of natural justice. He submits that the non-compliance with Rule 46A, as pointed out by the CIT(A), was not deliberate or wilful but on account of inadvertent mistake and ignorance on the part of the persons dealing with the matter before the CIT(A). We are thus urged to remit the matter back to the CIT(A) for this short reason alone. Without prejudice to this line of argument, learned counsel for the assessee submits that he has a strong case on merits and in the event of the Tribunal being kind enough to admit these additional evidences for the first time before the Tribunal, he is happy to argue on merits. He also submits that these additional evidences are crucial for determination of issues in this appeal, and points out the justification for each such additional evidence.

4. Learned Departmental Representative relies upon the stand of the CIT(A), but quite fairly does not dispute the matter being remitted to the file of the CIT(A) for adjudication on merits.

5. Having heard the rival contentions and having perused the material on record, we are inclined to accept this suggestion of the learned counsel and remit the matter back to the file of the CIT(A) for fresh adjudication after admission of the additional evidences by giving the assessee one more opportunity of presenting his case. In any case, we have considered the justification for submission of additional evidence, and we are satisfied with the bonafides of the same. In our considered view, on merits, these evidences ought to have been admitted by the CIT(A). We, therefore, remit the matter to the file of the CIT(A) with the directions as above. In view of the fact that the matter being remitted to the file of the CIT(A) with grounds of appeal for fresh adjudication, we see no need to deal with the grounds of appeal raised before us on merits. That aspect of the matter is academic as of now and does not need our adjudication.

6. In the result, the appeal is allowed for statistical purposes. Pronounced in the open court today on the 27th day of October, 2017.

Sd/-

Rajpal Yadav
(Judicial Member)

Ahmedabad, the 27th day of October, 2017

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Sd/-

Pramod Kumar
(Accountant Member)

Copies to: (1) *The appellant*
(2) *The respondent*
(3) *Commissioner*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

TRUE COPY

*Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad*