

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH : KOLKATA

[Before Hon’ble Sri N.V.Vasudevan, JM & Dr.Arjun Lal Saini, AM]

I.T.A No. 448/Kol/2016

Assessment Year : 2010-11

M/s Mallick Brothers  
Hooghly  
[PAN : AAEFM 5690 A]  
(Appellant)

-vs.-

I.T.O., Ward-2(2)  
Hooghly.

(Respondent)

For the Appellant : Shri Soumitra Choudhury, Advocate

For the Respondent : Shri Soumyajit Dasgupta, Addl.CIT

Date of Hearing : 21.11.2017.

Date of Pronouncement : 29.11.2017.

**ORDER**

**Per N.V.Vasudevan, JM**

This is an appeal by the assessee against the order dated 14.01.2016 of CIT-(A)-6, Kolkata relating to A.Y.2010-11.

2. The Assessee is a partnership firm. The assessee carries on the business of distribution for Indian LP gas of Indian Oil Corporation Ltd. For A.Y.2010-11 the assessee filed return of income declaring total income of Rs.4,04,529/-. The AO completed the assessment u/s 143(3) of the Income Tax Act, 1961(Act) by an order dated 19.03.2013 determining the total income at Rs.19,07,520/- after making the following additions :-

Sl.No.	Particulars	Amount	Amount
1.	Returned Income		Rs.4,04,529.00
2.	Purchases not confirmed [as discussed in Para no.3a o 3b]	Rs.11,17,251.00	
3.	Unexplained purchase [As discussed in Para no.4 and 4a]	Rs.2,22,890.00	
4.	Overhead expenses [As discussed in Para 5]	Rs.1,62,853.00	Rs.15,02,994.00
5.	Total		Rs.19,07,523.00
6.	Rounded off u/s 288A		<b>Rs.19,07,520.00</b>

3. The Assessee filed an application u/s 154 of the Act pointing out that the figure of addition on account of unconfirmed purchase at Rs.11,17,251/- made in the order of assessment u/s 143(3) of the Act dated 19.03.2013 was erroneous. This application was accepted by the AO and addition was reduced to Rs.10,68,251/- from Rs.11,17,251/-. Order u/s 154 of the Act was passed on 26.04.2013.

4. The Assessee filed an appeal before CIT(A) on 09.05.2013 in Form No.35 which is the form in which the appeal has to be filed before CIT(A). The assessee has mentioned that the appeal is being filed against the order passed u/s 143(3)/154 of the Act and in the column with regard to the date of service of the order against which the appeal is filed it has been mentioned as N.A. In the column in the form of the appeal regarding date of service of the order against which appeal is being filed, it has been mentioned as 26.04.2013. In the grounds of appeal raised before CIT(A) the assessee has however challenged the addition of Rs.11,17,251/- (which was modified to Rs.10,68,251/- by the order u/s 154 of the Act dated 26.04.2013). The assessee also challenged the addition of Rs.2,22,890/- made in the order u/s 143(3) of the Act dated 19.03.2013.

5. We have already seen that in the form of appeal i.e. Form No.35 filed before CIT(A) the assessee has mentioned the section under which the appeal against was passed as 143(3)/154 of the Act. Since the grounds of appeal were with reference to the order dated 19.03.2013 passed u/s 143(3) of the Act, CIT(A) was in doubt as to which is the order which is the subject matter of the appeal filed before him. The CIT(A) called upon the assessee to clarify the position. The assessee gave the following clarification :-

“(1) That after Receiving Original Demand Notice and Order u/s 143(3) dated 19.03.2013 a Discrepancy of Rs.49,000/- [Rs.16,78,288 – Rs.16,29,299] was Detected and informed to I.T.O. 24(2) by written petition on 11.04.2013 [within the statutory period u/s 249(2) - date as per Original service of Notice for filing Appeal was 17.04.2013]

(2) That I.T.O. Rectified the mistake which was apparent from record on 26.04.2013 u/s 154 which was received on that date by the Appellant the Order u/s 154 only with Notice of Demand.

(3) That while filing of Appeal to your honour the date of receipt was reflected in Form No.35 as on 26.04.2013. “

6. The above explanation given by the assessee was very vague. The CIT(A) therefore dismissed the appeal of the assessee on the ground that the grounds of appeal raised by the assessee were with reference to additions made in the order u/s 143(3) of the Act dated 19.03.2013 but Form 35 was in relation to the order dated 26.04.2013 passed u/s 154 of the Act. Since the grounds raised by the assessee did not arise out of the order dated 26.04.2013 passed u/s.154 of the Act, the CIT(A) dismissed the appeal of the assessee.

7. Aggrieved by the order of CIT(A) the assessee has filed the present appeal before the tribunal.

8. In the grounds of appeal the assessee has made it very clear that there is a typographical error while filling up Form No.35 which is the form of appeal filed before CIT(A). Instead of mentioning the section under which the order of appeal against is passed as 143(3) it has been wrongly mentioned as 143(3)/154 of the Act. It was the plea of the assessee that CIT(A) without giving reasonable opportunity of being heard to the assessee arbitrarily came to the conclusion that ground of appeal does not arise out of the order against which the appeal has been filed.

9. After hearing the rival submissions, we are of the view that the order of CIT(A) has to be set aside and the assessee should be afforded opportunity of rectifying the typographical error in Form No.35. It is clear from all circumstances that the assessee intended to file an appeal only against the order u/s 143(3) of the Act dated 19.03.2013 as modified by the order dated 26.04.2013 passed u/s 154 of the Act. We are of the view that the approach of CIT(A) is too technical. We therefore permit the assessee to amend

Form NO.35 filed before CIT(A) and to mention the correct provision of law under which order of appeal against was passed as also the date of service of such order of appeal against. The CIT(A) is thereafter directed to consider the appeal of the assessee in accordance with law. If there is a delay in filing of the appeal before the CIT(A) as on the date when the appeal was presentation by the assessee on 09.05.2013 before CIT(A), the assessee should be given an opportunity of explaining the delay in filing the appeal. The CT(A) shall consider all the issues on merit including the condonation of delay, if any, in filing appeal before CIT(A) in accordance with law after affording opportunity of being heard to the assessee.. For statistical purposes the appeal of the assessee is treated as allowed.

10. In the result the appeal by the assessee is allowed for statistical purposes.

**Order pronounced in the Court on 29.11.2017.**

Sd/-  
[Dr.A.L.Saini]  
Accountant Member

Sd/-  
[ N.V.Vasudevan ]  
Judicial Member

Dated : 29.11.2017.

[RG Sr.PS]

Copy of the order forwarded to:

- 1.M/s Mallick Brothers, Vill. & P.O.-Dr. Prasad das Mullick Road, Dist. Hooghly, Pin-712103.
2. I.T.,O., Ward-2(2), Hooghly.
3. C.I.T. (A)-6, Kolkata.      4. C.I.T.-8, Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By Order

Sr. Private Secretary  
Head of Office/DDO,, ITAT, Kolkata Benches

