

IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH KOLKATA

BEFORE SHRI N.V. VASUDEVAN, JM & DR. A.L.SAINI, AM

आयकरअपीलसं./ITA No.959/Kol/2016

(निर्धारणवर्ष / Assessment Year: 2011-12)

Late Madan Mohan Patodia through Pulak Patodia, L/R C/o V.N. Purohit & Co., CA, Diamond Chambers, Unit-III, 4 th Floor, Suit No.4G, 4, Chowringhee Lane, Kolkata – 700 016.	Vs.	ACIT, Circle-33, Kolkata. 10B, Middleton Row, Kolkata – 700 071.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. : AFUPP 7215 F		
(APPELLANT)	..	(RESPONDENT)

Appellant by

:Shri V.N. Purohit, Advocate.

Respondent by

:Shri Arindam Bhattacharjee, ACIT

सुनवाईकीतारीख/ **Date of Hearing** : **23/11/2017**

घोषणाकीतारीख/**Date of Pronouncement** : **13/12/2017**

आदेश / ORDER

Per Dr. Arjun Lal Saini, AM:

The captioned appeal filed by the Assessee, pertaining to assessment year 2011-12, is directed against the order passed by the Id. Commissioner of Income Tax (Appeals)-9, Kolkata, in Appeal No.347/CIT(A)-9/Cir-33/2014-15/Kol, dated 15.03.2016, which in turn arises out of an order passed by the Assessing Officer under section 143(3) of the Act, dated 22.01.2014.

2.The assessee has raised the following grounds of appeal:

"1. That the CIT(A) has wrongly and for the reasons but known to him stated that AR of the assessee did not press any other grounds except ground no.2 which the AR has strongly denied this allegation.

2. That under wrong misunderstanding and/or other reasons known only to CIT(A), he has erred in not deciding all the grounds except ground No.4 which was specifically withdrawn vide written submission and specially in not deciding ground No.3 and 6.

3. *That the appellant craves leave to amend or withdraw above ground or add further grounds on or before the hearing of the appeal."*

3. At the outset itself, the Id. Counsel for the assessee pointed out that CIT(A) did not adjudicate Ground No.3 & 6 raised by the assessee, before him. During the appellate proceedings, the assessee had requested to the Id. CIT(A) not to press Ground No.4. But the Id. CIT(A) in his order stated that none of the grounds are pressed except Ground No.2. In Ground No.2, the CIT(A) directed the AO to allow depreciation as per law on expenditure disallowed as capital expenditure. The Id. Counsel stated that during the appellate proceedings, he had submitted before the Id. CIT(A) that Ground No.4 should not be pressed and also asked verbally that Ground Nos.4 & 5 should not be pressed. Therefore, it is absolutely clear that during the appellate proceedings, the assessee requested the Id. CIT(A) not to press Ground Nos.4 & 5 but the CIT(A) considered all the Grounds, as if, these were not pressed by the assessee except Ground No.2, which is wrong and against the principles of natural justice.

The Id. Counsel, therefore, submitted before us, that the assessee has never informed the CIT(A), not to press Ground Nos. 3 & 6. Since, the Ground Nos.3 & 6 were not adjudicated by the CIT(A), therefore, the assessee has been suffering losses. Therefore, the Id. Counsel requested the Bench to direct the Id. CIT(A) to adjudicate Ground Nos.3 & 6. The Id DR for the Revenue, has fairly agreed that ground Nos. 3 & 6 were pressed by the assessee but were not adjudicated by the Id CIT(A) because of error in communication.

4. We have heard the rival submissions and perused the materials available on record, we are of the view that during the appellate proceedings, the assessee never requested the CIT(A) not to press Ground Nos.3&6. This may be communication error in hearing the assessee. Therefore, ground Nos. 3 and 6 remain unadjudicated, which is against the principle of natural justice. Therefore, in the interest of justice and fair play, we direct the Id.

CIT(A) to adjudicate Ground Nos.3 & 6 raised by the assessee. Accordingly, we allow this appeal for statistical purposes.

5. In the result, the appeal filed by the assessee, is allowed for statistical purposes.

Order pronounced in the open court on this 13/12/2017.

Sd/-

(N. V. VASUDEVAN)

न्यायिक सदस्य / JUDICIAL MEMBER

कोलकाता /Kolkata;

दिनांक Dated 13/12/2017

RS,SPS.

Sd/-

(DR. A.L.SAINI)

लेखा सदस्य /ACCOUNTANT MEMBER

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant – Late Madan Mohan Patodia through PulakPatodia, L/R
2. प्रत्यर्थी/ The Respondent-ACIT, Circle-33, Kolkata.
3. आयकरआयुक्त(अपील) / The CIT(A), :Kolkata.
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, कोलकाता/ DR, ITAT, Kolkata
6. गार्डफाईल / Guard file.
सत्यापितप्रति

//True Copy//

By Order

Senior Private Secretary,
Head of Office/D.D.O,
I.T.A.T, Kolkata Benches,
Kolkata.