

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

[Before Hon’ble Sri N.V.Vasudevan, JM]

I.T.A No.2081/Kol/2017

Assessment Year : 2013-14

Calcutta Shipping Bureau
Haldia
[PAN : AACFC 0994 K]
(Appellant)

-vs.-

A,C.I.T., Circle-40,
Kolkata

(Respondent)

For the Appellant : Shri Pradip Kumar Patra, Advocate
For the Respondent : Mfd. Ghayas Uddin, Addl. CIT

Date of Hearing : 25.01.2018.

Date of Pronouncement : 02.02.2018.

ORDER

This is an appeal by the Assessee against the order dated 15.06.2017 of CIT(A)-12, Kolkata relating to A.Y.2013-14.

2. The assessee is a partnership firm. It is engaged in the business of acting as Customs House agent/custom broker. For A.Y.2013-14 the assessee filed return of income declaring total income of Rs.19,40,280/-. An order of assessment u/s 143(3) of the Income Tax Act, 1961 (Act) was passed by the AO determining the total income of the assessee after making certain additions as follows :-

Computation of Total Income and Tax thereon for the A.Y.2012-13

Particulars	Amount (Rs.)
Income from business and profession	19,13,541
Addition : as discussed above	9,03,885
Income from Other sources	26,739
Total Income	28,44,165
Assessed Total Income (rounded off)	28,44,170

3. It appears that the assessee filed an application pointing out certain errors in the order of AO and seeking rectification . It also appears that the AO passed an order dated 15.12.2015 dismissing the application filed by the assessee for rectification.

4. The assessee filed an appeal before CIT(A) on 07.01.2016 in Form No.35 which is the form of appeal in which the appeal has to be filed before CIT(A). The assessee in column with regard to the order against which the appeal is sought to be filed mentioned as follows :-

Section and sub-section of the Income-tax Act, 1961, under which the Assessing Officer/Valuation Officer passed the order appealed against and the date of such order.	143(3) and 154 of The Income Tax Act, 1961 dated 24.09.2015 and 15.12.2015 respectively.
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5. The CIT(A) came to the conclusion that the appeal was filed against the order u/s 154 of the Act dated 15.12.2015 for the following reasons :-

“2. On perusal of Form-35, Grounds of Appeal and Statement of facts submitted by the appellant in the instant appeal, it reveals that the appellant filed this appeal on 7.01.2016 stating "143(3) and 154 of the Income Tax Act, 1961 dated 24.09.2015 and 15.12.2015 respectively" but date of service of the relevant notice of demand written in Form-35 is 15.12.2015. Therefore, it may be taken into consideration that the appellant filed this instant appeal against the order under Sec. 154 of the Act passed on 15.12.2015, not against the order under Sec. 143(3) of the Act passed on 24.09.2015. It is also seen that in the order under Sec.143(3) completed by the AO raising the demand of Rs.3,23,770/-; where the demand has been raised under Sec. 154 of the Act at Rs.3,24,940/- differentiating only Rs.1170/-, which is a small amount. It is very clear that the appellant filed this appeal against the order under Sec. 154 of the Act, not the order under Sec.143(3) of the Act since the appeal filing date is 07.01.2016. If the appellant filed the appeal against the order under Sec. 143(3) of the Act, the due date of filing appeal might be within one month from the passing of the order under Sec.143(3) of the Act dated 24.09.2015. It is very much clear that the appellant filed this appeal against the order under Sec.154 of the Act.”

6. Thereafter the CIT(A) proceeded to hold that various grounds raised by the assessee in the course of appeal cannot be considered as a mistake apparent on the record and ultimately dismissed the grounds with regard to various additions which were challenged in the appeal challenged by the assessee.

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

8. Mr. Pradip Kumar Patra, Advocate learned counsel for the assessee, who also appeared in the proceedings before CIT(A) appeared on behalf of the assessee. He made a statement across the bar that the CIT(A) never raised the issue with regard to the order against which the appeal should be treated as having filed at the time of hearing of the appeal before him. He submitted that the appeal was against the order u/s 143(3). According to him the impugned order may be set aside as the assessee was not afforded opportunity of being heard on the issue on which the CIT(A) dismissed the various grounds of appeal challenging the addition made by the AO in the order of assessment. The Id. DR relied on the order of CIT(A),

9. I am of the view that the statement made by the Id. Counsel for the assessee across the bar that CIT(A) did not afford any opportunity to the assessee on the question as to against which order the appeal was filed by the assessee, is accepted.. I am of the view that order of the CIT(A) should be set aside and CIT(A) should be directed to issue a show cause notice to the assessee as to whether the appeal should be treated as one filed against the order u/s 143(3) of the Act dated 24.09.2015 or dated 15.12.2015 passed u/s 154 of the Act. If there is any delay in filing the appeal the assessee should be called upon to explain the reasons for the delay. The CIT(A) should thereafter accept the stand of the assessee with regard to the order against which the appeal should be treated as having been filed and then decide various grounds on merits in accordance

with law after due opportunity to the assessee. With these observations, I allow the appeal of the assessee for statistical purposes.

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

Order pronounced in the Court on 02.02.2018.

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

Dated : 02.02.2018.
[RG Sr.PS]

Copy of the order forwarded to:

1. Calcutta Shipping Bureau, 2, Church Lane, Room No.304A, Kolkata-700001.
2. A.C.I.T., Circle-40, Kolkata.
3. CIT(A)-12, Kolkata
4. C.I.T-14, Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By Order

Senior Private Secretary
Head Of Office/ D.D.O., ITAT Kolkata Benches