

IN THE INCOME TAX APPELLATE TRIBUNAL

“SMC-C” BENCH : BANGALORE

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER

ITA No.684/Bang/2018
Assessment Year :2006-07

Shri Rajiv Kumar Jhunjhunwala, No. 133, 3 rd Main, R.M.V. Extension, 2 nd Stage, 1 st Block, Bangalore – 560 094. PAN: ABGPJ5436Q	vs.	The ITO, Ward – 6 (3), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Smt. Suman Lunkar, CA
Respondent by	:	Smt. Padma Meenakshi, JCIT (DR)

Date of hearing	:	07.05.2018
Date of Pronouncement	:	11.05.2018

ORDER

Per Shri A.K. Garodia, Accountant Member

This appeal is filed by the assessee which is directed against the order of Id. CIT (A)-6, Bangalore dated 29.07.2016 for Assessment Year 2006-07.

2. The grounds raised by the assessee as per revised grounds of appeal are as under.

“1. The learned Assistant Commissioner of Income Tax, had erred in passing the order in the manner passed by him and the learned Commissioner of Income tax (Appeals) has erred in confirming the same. The orders passed are bad in law and against the principles of natural justice and are required to be quashed in toto.

2.1 The learned CIT(A) had erred in dismissing the appeal filed by the appellant holding that the appellant is not interested in pursuing the appeal as the appellant did not respond to the notices of hearing issued, The action of CIT(A) in passing the order Exparte being bad in law and against the principles of natural justice makes the appellate order bad in law and such order is liable to be quashed.

2.2 In any case and without prejudice, the learned CIT(A) ought to have disposed of the appeal on merits of the case. The action of

CIT(A) in not disposing the appeal on merits of the case makes the appellate order bad in law and such order is liable to be quashed.

3. In any case the learned assessing officer had erred in passing the order Exparte without complying with necessary formalities. The passing of such Exparte order being bad in law, requiring the assessment to be quashed.

4. In any case and without prejudice the learned Assessing Officer had erred in disallowing a sum of Rs. 5,98,439/- being 20% of the total expenditure claimed by the appellant holding that the expenditure claimed is on higher side. On the facts and circumstances of the case and the law applicable, the disallowance as made is without any basis and purely on estimation basis and is to be deleted in entirety.

5. Further in any case and without prejudice, the learned Assessing officer had erred in treating a sum of Rs. 8,11,804/- being fixed assets purchased during the year as Unexplained Investments in the hands of the appellant. On proper appreciation of facts of the case and the law applicable, there is no Unexplained Investment at all. The addition as made is wholly erroneous is to be deleted.

6. The learned Assessing officer had erred in not appreciating the fact that the books of appellant were audited u/s 44AB of the Act and all the expenditure claimed/ additions made to fixed assets are duly vouched and explainable. The action of Assessing officer in making the additions/ disallowances based on such surmises and conjectures are bad in law. The additions as made are to be deleted and the income as returned by the appellant is to be accepted.

7. The appellant denies the liability to pay interest u/s. 234B of I.T .Act, 1961. The interest having been levied erroneously is to be deleted.

8. In view of the above and on other grounds to be adduced at the time of hearing, it is requested that the orders passed be quashed or at least the disallowance/ additions made to the income returned be deleted and interest levied be also deleted.”

3. At the very outset, it was submitted by Id. AR of assessee that the impugned order of CIT (A) is ex-parte qua the assessee. Regarding the reasons for non-appearance before CIT (A), she submitted an affidavit of assessee and pointed out that as per this affidavit of assessee, the assessee has shifted to Ludhiana and he is residing there. She also pointed out that in Form No. 35 filed before CIT(A), the address given for service of notice was of the Id. AR of assessee

Shri Sunil D. Surana, Dhariwal and Sreenivas Chartered Accountants, No. 10, 1st Floor, South Park Road, Opposite Seshadripuram College, Nehrunagar, Bangalore-560 020. She further pointed out that it is also stated by assessee in the affidavit that Id. AR of assessee whose name is mentioned in Form 35 has left the firm Dhariwal and Sreenivas in the year 2015 and the assessee has also moved from Bangalore to Ludhiana and under these circumstances, the notices issued by CIT (A) was never served and the assessee had no knowledge of the notices. She also pointed out that the original order of CIT (A) was also not served on the assessee and later on, the assessee obtained the impugned order from the office of CIT (A) and the appeal was filed before the Tribunal. She submitted that under these facts, the matter should be restored back to the file of CIT (A) for fresh decision after providing reasonable opportunity of being heard to assessee. The Id. DR of revenue supported the order of CIT(A). She also submitted that several notices were issued by CIT (A) and therefore, no further opportunity is required to be given to assessee.

4. I have considered the rival submissions. I find that in the order of CIT(A), it is stated by CIT (A) in Para 1 of the impugned order that several notices were issued on 06.12.2010, 22.02.2011, 07.05.2015, 02.03.2016, 27.04.2016 and the final notice on 03.06.2016. But there is no mention in the order of CIT (A) as to whether these notices were served on the assessee or not. Considering all these facts and in the interest of justice, I feel it proper to restore the matter back to the file of CIT(A) for fresh decision after providing reasonable opportunity of being heard to both sides. Hence, I set aside the order of CIT (A) and restore the matter back to his file for fresh decision after providing adequate opportunity of being heard to both sides and I also hold that the assessee should provide the his address to CIT (A) at which the notice of hearing should be sent by CIT (A) within one month from the date of receipt of this order.

5. In the result, the appeal filed by the assessee is allowed for statistical purposes.
Order pronounced in the open court on the date mentioned on the caption page.

Sd/-
(ARUN KUMAR GARODIA)
Accountant Member

Bangalore,
Dated, the 11th May, 2018.
/MS/

Copy to:

- | | |
|---------------|------------------------|
| 1. Appellant | 4. CIT(A) |
| 2. Respondent | 5. DR, ITAT, Bangalore |
| 3. CIT | 6. Guard file |

By order

Senior Private Secretary,
Income Tax Appellate Tribunal,
Bangalore.