

**IN THE INCOME TAX APPELLATE TRIBUNAL
"J" Bench, Mumbai**

**Before Shri Saktijit Dey, Judicial Member
and Shri N.K. Pradhan, Accountant Member**

ITA No.6407/Mum/2016
(Assessment Year:2012-13)

A C I T - 1(2)(1) Room No. 535, 5th Floor Aayakar Bhavan, M.K. Road Mumbai 400020	Vs.	M/s. Jashubhai Engineering Pvt. Ltd. Taj Building,210, Dr. D.N. Road Fort, Mumbai 400001
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PAN –AAACP2503N

Appellant

Respondent

ITA No. 6408/Mum/2016
(Assessment Year:2012-13)

A C I T - 1(2)(1) Room No. 535, 5th Floor Aayakar Bhavan, M.K. Road Mumbai 400020	Vs.	M/s. Jashubhai Media Pvt. Ltd. Taj Building, 210, Dr. D.N. Road Fort, Mumbai 400001
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PAN –AAACJ7453P

Appellant

Respondent

Appellant by: Shri Saurabh Deshpande
Respondent by: Dr. K. Shivaram

Date of Hearing: 10.05.2018
Date of Pronouncement: 23.05.2018

ORDER

Per Saktijit Dey, JM

The aforesaid appeals by the Revenue in respect of two different assessee arise out of two separate orders, both dated 18.07.2016, of the Commissioner of Income Tax (Appeals)-2, Mumbai pertaining to AY 2012-13.

ITA No. 6407/Mum/2016 – A.Y. 2012-13

2. The brief facts of the case are that the assessee filed its return of income for the assessment year under dispute on 28.09.2012 declaring income of ₹1,02,59,325/-. During the assessment proceedings the AO on verifying the return of income as well as the financial statements of the

assessee issued a questionnaire calling upon the assessee to furnish various details in relation to the deductions claimed under different heads and also to justify them. As alleged by the AO, in response to the said questionnaire and notice issued under Section 142(1) of the Income Tax Act (hereinafter "the Act") the assessee did not furnish the details called for. As a result the AO proceeded to make various additions/disallowances by denying deductions claimed by the assessee which resulted in determination of total income at ₹8,84,40,550/-. Being aggrieved with the assessment order assessee preferred appeal before the CIT(A).

3. In the course of proceedings before the First Appellate Authority assessee produced number of documentary evidences as well as affidavits in support of its claim of deductions/expenditure. On the basis of the evidences and affidavits filed by the assessee the learned CIT(A) granted substantial relief to the assessee. Being aggrieved by the aforesaid decision of the learned CIT(A) Revenue is in appeal before us.

4. We have considered rival submissions and perused the material on record. The basic grievance of the Revenue as articulated by the learned Departmental Representative before us is that in the course of assessment proceedings assessee did not produce any details/documentary evidences as called for by the AO. Before the CIT(A) assessee produced fresh evidences and relying upon such evidences the learned CIT(A) allowed deductions claimed by the assessee. The learned D.R. submitted, without affording any opportunity to the AO to verify the evidences submitted by the assessee and offer his comments, learned CIT(A) has decided the issues, which is in gross violation of Rule 46A of the Income Tax Rules, 1962. Thus, he submitted that the issue may be restored back to the AO for de novo adjudication after considering the evidences submitted by the assessee before the learned CIT(A).

5. Dr. K. Shivaram, learned counsel for the assessee, though, supported the decision of the learned CIT(A), however, he fairly submitted that in the course of proceedings before First Appellate Authority fresh

evidences were produced by the assessee, relying upon which the CIT(A) has granted relief to the assessee. He also fairly submitted that the CIT(A) has not remanded the matter to the AO seeking his comments on the evidences submitted by the assessee. Thus, he submitted that the issues may be restored back to the AO for de novo adjudication.

6. Having considered the submissions made before us by the learned counsels of both the parties we found that before the AO, for whatever may be the reason, assessee did not produce evidences or complied with the queries made by the AO, as a result of which number of additions/ disallowances were made by the AO. Before the First Appellate Authority assessee did produce fresh evidences in support of its claim of deduction. Further, affidavits of concerned Chartered Accountant and employee of the assessee company were also filed before the CIT(A) stating certain facts. However, it is a fact on record that neither the evidences filed before the CIT(A) nor the affidavits were sent for verification of the AO seeking his views/comments on assessee's claim. The learned CIT(A), without following the mandate of Rule 46A, sub-rules (1), (2) and (3) proceeded to decide the appeal relying upon the fresh evidences/affidavits filed by the assessee. Thus, prima facie there is a clear violation of Rule 46A of the I.T. Rules as the learned CIT(A) did not afford a fair opportunity to the AO in terms of the said Rules. That being the case, we are inclined to set aside the order of the learned CIT(A) and restore the issues to the file of the AO for de novo adjudication after considering the evidences filed by the assessee or which may be filed by the assessee in the course of fresh proceedings. Needless to mention, the AO must afford reasonable opportunity of being heard to the assessee before deciding the issues. Grounds are allowed for statistical purposes.

7. In the result, the appeal filed by the Revenue is allowed for statistical purposes.

ITA No. 6408/Mum/2016 – A.Y. 2012-13

8. Facts in this appeal being identical, aforesaid decision of ours in ITA No. 6407/Mum/2016 will apply mutatis mutandis to this appeal as well.

Resultantly, the grounds raised by Revenue are allowed for statistical purposes.

9. In a nutshell, both the appeals filed by Revenue are allowed for statistical purposes.

Order pronounced in the open court on 23RD May, 2018.

Sd/-
(N.K. Pradhan)
Accountant Member

Sd/-
(Saktijit Dey)
Judicial Member

Mumbai, Dated: 23rd May, 2018

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) -2, Mumbai*
4. *The CIT- 1, Mumbai*
5. *The DR, "J" Bench, ITAT, Mumbai*

By Order

//True Copy//

Assistant Registrar
ITAT, Mumbai Benches, Mumbai

n.p.