

**IN THE INCOME TAX APPELLATE TRIBUNAL, RANCHI
BENCH, RANCHI**

BEFORE SHRI N.S.SAINI, ACCOUNTANT MEMBER
&
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No.207/Ran/2016
A.Y. : 2009-2010

ITO Ward-2(1), Jamshedpur	vs	M/s Om Dayal Ingots & Steel Company Pvt. Ltd Madhu Vatika M.E.School, Jugsalai, Jamshedpur
PAN No. : AAACO 7034 M		
(Appellant)	.	Respondent

Revenue by : Shri A.K.Mohanty, JCIT
Assessee by : None

Date of Hearing : 28.05.2018
Date of Pronouncement : 30.05.2018

ORDER

Per Pavan Kumar Gadale, JM:

This is an appeal filed by the Revenue against the order of CIT(A), Jamshedpur, dated 25.04.2016, for the assessment year 2009-2010.

2. None appeared on behalf of the assessee when the matter was called for hearing, however, an adjournment application has been filed by the assessee seeking adjournment on the ground that due to some medical ailment he could not attend the hearing, which in our opinion, is not a plausible one, therefore, the Bench decided to dispose off the appeal after considering the submissions of Id. DR.

3. The Revenue has raised the following grounds of appeal :-

1. *On the facts and in the circumstances of the case the Ld.CIT(A) erred in deleting the entire addition of Rs.2,63,15,090/- made by the Assessing Officer U/s68 of the IT Act, 1961.*
2. *On the facts and in the circumstances of the case the Ld.CIT(A) erred in not considering fixed Assets sales figure mentioned in the Depreciation chart is part of Books of Accounts of the Assessee.*
3. *On the facts and in the circumstances of the case the Ld.CIT(A) was not justified in not giving extension of time to the Assessing Officer vide his letter F.No.ITO/W2(1)/JR/R.REPORT/2015-16 DATED 28.03.2016 for furnishing Remand Report as desired by the Ld. Commissioner of Income Tax (Appeals).*

4. Brief facts of the case are that the assessee is engaged in the business of manufacturing of Ingots and filed the return of income for the assessment year 2009-2010 on 30.09.2009 with total income of Rs.Nil. Subsequently, the case has been reopened on 27.03.2014 u/s.147 of the Act. In response to the notice u/s.148 of the Act, the assessee requested to treat the original return of income filed u/s.139(1) of the Act as its return of income. Thereafter the AO completed the assessment u/s.143(3)/147 of the Act and assessed total income at Rs.2,63,15,090/- and passed order u/s.143(3)/147 of the Act, dated 31.03.2015.

5. Aggrieved by the assessment order, the assessee has filed an appeal with the CIT(A). In the appellate proceedings the assessee argued the grounds and reiterated the submissions made before the AO. The CIT(A) after considering the submissions of assessee and the findings of AO, allowed the appeal of the assessee.

6. Aggrieved by the order of CIT(A), the Revenue has filed an appeal before the Tribunal.

7. Ld. DR before us submitted that the CIT(A) has erred in deleting the addition of Rs.2,63,15,090/- made u/s.68 of the Act. Ld DR further submitted that the CIT(A) has not waited till the remand report received from the AO, therefore, prayed for restoring the order of AO

8. We heard the submissions of Id. DR and perused the material on record. Prima facie, the sole matrix of the disputed issue is with respect to the deleting the addition made u/s.68 of the Act and also the depreciation. The contention of Id. DR that the CIT(A) is not justified in not waiting for the remand report received from the AO. We on perusal of the order of CIT(A) found that the CIT(A) has forwarded the submissions made by the assessee to the AO but till 11th April, 2016 the remand report has not been received by the CIT(A) and the CIT(A) further relied on the judicial decision and allowed the appeal of the assessee. We are unable to understand as to why the CIT(A) has not waited when the request was sent for remand report from the AO which should be incorporated in the order while deciding the issue. Considering the principle of natural justice, we remit the entire disputed issue to the file of CIT(A), who shall examine and verify and pass a speaking order after receiving the remand report from the AO and the assessee shall be provided adequate opportunity of hearing. Accordingly, the ground of appeal of Revenue is allowed for statistical purposes.

9. In the result, appeal of the Revenue is allowed for statistical purposes.

Order pronounced in the open court on 30/05 /2018

Sd/-
(N.S.SAINI)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Ranchi, Dated 30/05/2018

Prakash Kumar Mishra , Sr. Ps

Copy of the Order forwarded to :

1. The Appellant –
ITO Ward-2(1), Jamshedpur
2. The Respondent –
M/s Om Dayal Ingots & Steel Company
Pvt. Ltd Madhu Vatika M.E.School,
Jugsalai, Jamshedpur
3. The CIT(A) concerned
4. CIT , concerned
5. DR, ITAT, Ranchi
6. Guard file.

BY ORDER,

//True Copy//

SR.PS, ITAT, RANCHI