

आयकर अपीलिय अधिकरण “जे” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL “J” BENCH, MUMBAI
BEFORE SHRI SHAMIM YAHYA, AM AND SHRI SANDEEP GOSAIN, JM

आयकर अपील सं./I.T.A. No. 7063/Mum/2016
(निर्धारण वर्ष / Assessment Year: 2008-09)

Sunanda Industrial Machinery Limited (since merged with Mafatlal Industries Limited) Kaledonia, Office No. 3, 6 th Floor, Sahar Road, Andheri (East), Mumbai-400 069	बनाम/ Vs.	Dy. CIT -1(3), Mumbai-400 020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AA ECS 6379 K		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by	:	Shri Ketan Ved
प्रत्यर्थी की ओर से/Respondent by	:	Ms. Aarju Garodia

सुनवाई की तारीख / Date of Hearing	:	04.06.2018
घोषणा की तारीख / Date of Pronouncement	:	02.07.2018

आदेश / ORDER

Per Shamim Yahya, A. M.:

This appeal by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals)-3, Mumbai dated 14.10.2016 and pertains to the assessment year 2008-09.

2. The grounds of appeal read as under:

Ex-parte order

1. The learned Commissioner (Appeals) erred in passing order ex-parte.
2. The order passed by the Commissioner (Appeals) is ultra vires and ought to be quashed.
3. The learned Commissioner (Appeals) erred in not giving sufficient opportunity of being heard to the appellant.

Notices sent to non-existent person

4. The appellant submits that the appellant has not received any notices of hearing or show cause notices.
5. The learned Commissioner (Appeals) erred in sending notice dated 28 September 2016 to Sunanda Industrial Machinery Ltd., a non-existent person.
6. The learned Commissioner (Appeals) ought to have appreciated that the notices ought to be served on the appellant viz. Mafatlal Industries Limited, being successor of Sunanda Industrial Machinery Ltd.

Appearance before the Commissioner (Appeals)

7. The learned Commissioner (Appeals) erred in holding that the appellant did not attend before the learned Commissioner (Appeals) for the appeal hearing.
8. The learned Commissioner (Appeals) ought to have appreciated that the appellant had appeared before the office of the learned Commissioner (Appeals) on 30 July 2015 pursuant to a telephone call received from the office of the Commissioner (Appeals) on 29 July 2015.
9. The learned Commissioner (Appeals) ought to have appreciated that the appellant had appeared before the learned Commissioner (Appeals) on 12 August 2015 along with the written submissions and paperbook and explained that the quantum appeal is pending before the Tribunal which is scheduled for hearing on 2 December 2015. The appellant submits that the Commissioner (Appeals) had agreed to keep the instant penalty appeal hearing in abeyance till disposal of quantum appeal by the Hon'ble Tribunal.

Grounds not adjudicated

10. The learned Commissioner (Appeals), erred in holding that Ground Nos. 1 and 2 reproduced below are of general in nature and do not require adjudication.
"Order had in law and on facts

1. The learned Deputy Commissioner erred in passing the penalty order under section 271(1)(c) of the Act on a non-existent entity i.e. SIML.
2. The learned Deputy Commissioner ought to have appreciated that no assessment can be made of a non-existent person and accordingly no action can be brought on it. "

Penalty Proceedings under section 27J(1)(c)

11. The learned Commissioner (Appeals) erred in upholding the penalty of Rs. 17,60,006 levied under section 271(1)(c).
12. The learned Commissioner (Appeals) erred in holding that the appellant has no evidence to produce in contrary to the evidence of the Assessing Officer and does not intend to give any explanation in support of the grounds of appeal.

13. The appellant submits that the order ought to be quashed.

General

3. This case relates to levy of penalty u/s. 271(1)(c) of the Income Tax Act, 1961. Upon confirmation of the penalty by the Id. Commissioner of Income Tax (Appeals), the assessee has raised various grounds against the order passed by the Id. Commissioner of Income Tax (Appeals) which includes issues of opportunity and lack of jurisdiction.

4. However before us, the learned counsel of the assessee was not in a position to substantiate the other grounds raised, except for submitting that on quantum addition, this tribunal has remitted the issue to the file of the Id. Commissioner of Income Tax (Appeals). He also referred to another tribunal decision in which it was held that penalty doesn't survive if the quantum addition has been remitted to the file of the authorities below.

5. We have heard both the counsel and perused the records. We find that a finding has been given by the tribunal in the quantum addition in this case that the order of the Id. Commissioner of Income Tax (Appeals) was not a speaking and reasoned order. Hence, the issue was remitted to the file of the Id. Commissioner of Income Tax (Appeals).

6. In the present case, we find that there are various issues raised by the assessee regarding lack of opportunity and lack of jurisdiction which needs to be addressed by the Id. Commissioner of Income Tax (Appeals). Furthermore as noted above, the merits of addition have also been remitted by the tribunal to the file of the Id. Commissioner of

Income Tax (Appeals), as it was held that the order of the Id. Commissioner of Income Tax (Appeals) was not a speaking and reasoned order.

7. Accordingly in the facts and circumstances of the case and considering the discussions here in above, in our considered opinion, the interest of justice will be served if the issues raised in this appeal are remitted to the file of the Id. Commissioner of Income Tax (Appeals). The Id. Commissioner of Income Tax (Appeals) is directed to consider the issues afresh and pass an order accordingly as per law.

8. In the result, this appeal by the assessee stands allowed for statistical purposes.

Order pronounced in the open court on 02.07.2018

Sd/-

Sd/-

(Sandeep Gosain)

(Shamim Yahya)

न्यायिक सदस्य / Judicial Member

लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated : 02.07.2018

व.नि.स./Roshani, Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT - concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai