

आयकर अपीलीय अधीकरण, न्यायपीठ – “D” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH: KOLKATA
 (समक्ष) Before श्री ए. टी. वर्की, न्यायीक सदस्य एवं/and श्री एम. बालागणेश, लेखा सदस्य)
 [Before Shri A. T. Varkey, JM & Shri M. Balaganesh, AM]

I.T.A. No. 67/Kol/2017
Assessment Year: 2012-13

Income-tax Officer, Wd-40(3), Kolkata	Vs.	Greenfield Road Transport (PAN: AAGFA2850G)
Appellant		Respondent

Date of Hearing	20.06.2018
Date of Pronouncement	11.07.2018
For the Appellant	Shri A. Bhattacharjee, Addl. CIT
For the Respondent	N o n e

ORDER

Per Shri A.T.Varkey, JM

The appeal filed by the Revenue is against the order of Ld. CIT(A)-12, Kolkata dated 28.10.2016 for AY 2012-13.

2. The sole issue involved in this appeal of Revenue is against the action of the Ld. CIT(A) in deleting the disallowance of Rs.71,20,998/- on account of hire charges and trip expenses by admitting fresh evidence in contravention of the provisions of Rule 46A of the Income-tax Rules, 1962 (herein after referred to as the “Rules”).

3. Briefly stated facts of the case are that the AO found that the assessee has debited Rs.5,60,76,454/- and Rs.1,51,33,524/- respectively in its P&L Account under the heads “Hire Charges” and “Trip Expenses” respectively. During the course of assessment proceedings, the assessee was asked to produce party wise details of these expenses along with mode of transaction. According to AO, the assessee did not even file the ledger copy of these expenses. As the assessee failed to produce any document and also failed to establish the genuineness of these expenditure, as per provisions of section 37(1) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”), a sum of Rs.71,20,998/-, being 10% of expenditure under these heads i.e. of Rs.7,12,09,978/- was disallowed and added

back by the AO to the total income of the assessee. Aggrieved, assessee preferred an appeal before the Ld. CIT(A), who deleted the disallowance as made by the AO. Aggrieved, revenue is in appeal before us.

4. We have heard the submission of Id DR and carefully gone through the facts and circumstances of the case. Despite fixing the appeal thrice, none appeared on behalf of assessee and we note that the notice issued by speed post from our Tribunal also has returned. Therefore, in the absence of the Ld. AR, we proceed to hear the appeal of the Revenue in their absence because no useful purpose will be served keeping the appeal pending. So we are disposing the appeal of the Revenue after hearing the Id DR. The main grievance of the Revenue is against the action of the Id. CIT(A) in deleting the disallowance of Rs. 71,20,998/- by admitting fresh evidences without giving the Assessing Officer an opportunity for examining the veracity of the documents, which resulted in violation of Rule 46A of the Income Tax Rules. The Id. DR drew our attention to Para No.7.2 of the impugned order of the Id. CIT(A) wherein the Id. CIT(A) adjudicated the issues as under:

“7.2 I have considered the facts of the case and the submissions of appellant. It is seen that the assessee has debited Rs.5,60,76,454/- and 1,51,33,524/- respectively in its P&L account under the head, ‘Hire Charge and Trip Expenses’ respectively. The A.O disallowed a sum Rs.71,20,998/- being 10% of expenditure under these heads i.e. Rs.7,12,09,978/- as the assessee failed to produce any document and this also failed to establish the genuineness of these expenditure as per provision of section 37(1) of the Act. It is seen that the appellant maintained books of accounts duly audited submissions. These have been perused. The NP declared by the appellant is a healthy 2.7% which is rather on the high side in this kind of business and the disallowance by the A.O increases the NP to 11.5% which is an absurd amount. The appellant has maintained Registration Certificate of all the vehicles as well as the photocopies of the PAN of the owners of such vehicles and hire charges have been paid are very much with the appellant and same photocopies of them are annexed with this written submissions for your examination. The appellant further submits that the appellant maintains vehicle wise details of trip expenses (Vehicle wise details are filed in Annexure – ‘C’ and ‘D’ are enclosed along with this submissions)..... has not pointed out any deficiencies in their audited books. As per submitted, I find force in the contention of the appellant and hereby delete the disallowance made by the A.O.”

5. We note that the Assessing Officer has made the disallowance because the assessee had not filed ledger copy of the expenses it claimed and it failed to produce any documents to establish the genuineness of the expenditure claimed as “Hire Charge” and “Trip Expenses”. So, the Assessing Officer made disallowance of 10% of the expenses claimed. On appeal, the Id. CIT(A) has given relief to the assessee by taking note of the assessee’s submission and after perusal of Annexure ‘C’ & ‘D’ etc. From the perusal of the order of the Id. CIT(A), we note that the assessee had furnished certain documents which had not

been presented before the Assessing Officer during the assessment proceedings. In such a scenario, the Id. CIT(A) ought to have applied Rule 46A of the Rules before adjudicating the issue. As per Rule 46A, two stage opportunity need to be given by Ld. CIT(A) to AO. First, before admission of fresh evidence, and second after admission of evidence as to the merit of new evidence by calling for a remand report. Without doing so, Rule 46A of the Rules has been violated and, therefore, we find force in the ground of appeal of the Revenue. Therefore we set aside the order of the Id. CIT(A) and remit the matter back to the file of the Assessing Officer to de novo assessment on the issue discussed above on which the revenue has come in appeal.

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

Order is pronounced in the open court on 11.07.2018

Sd/-
(M. Balaganesh)
Accountant Member

Sd/-
(Aby. T. Varkey)
Judicial Member

Dated : 11th July, 2018

Jd.(Sr. P.S.)

Copy of the order forwarded to:

1. Appellant – ITO, Ward-40(3), Kolkata.
2. Respondent – Greenfield Road Transport, 2nd floor, 32, D. H. Road, Kolkata-700 060.
3. The CIT(A) -12, Kolkata. (sent through e-mail)
4. CIT Kolkata
5. DR, ITAT, Kolkata. (sent through e-mail)

/True Copy,

By order,

Sr. Pvt. Secretary