

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "E", MUMBAI**

**BEFORE SHRI C.N. PRASAD, JUDICIAL MEMBER AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA No.804/M/2016
Assessment Year: 2009-10**

M/s. Toshvin Analytical Pvt. Ltd., 103, S.J. House, 1 st Floor, Sitaram Mills Compound, NM Joshi Marg, Lower Parel, Mumbai - 400 011 PAN: AABCT 4482D	Vs.	DCIT 1(3)(2), Room No.540, 5 th Floor, Aayakar Bhavan, M.K. Rd, Mumbai - 400020
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Raturaj Gurjar, A.R.
Revenue by : Shri V. Justin, D.R.

Date of Hearing : 26.06.2018
Date of Pronouncement : 28.06.2018

ORDER

Per Rajesh Kumar, Accountant Member:

The present appeal has been preferred by the assessee against the order dated 18.12.2015 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2009-10.

2. The various revised grounds raised by the assessee are as under:

1. On the facts and in the circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals) erred in confirming disallowance of 4/5th of renovation expenditure, without appreciating that the expenditure was revenue in nature and incurred wholly and exclusively for the purpose of the Appellant's business; as such, the same

was fully allowable in the year of incurring the same.

2. On the facts and in the circumstances of the case, the learned Commissioner of Income Tax (Appeals) erred in not considering / appreciating the Appellant's submissions duly made before him from time to time in respect of the issues raised in grounds in respect of renovation expenditure, and in respect of the additional grounds, duly raised before him.
3. On the facts and in the circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals) erred in holding that the appellant had not filed Revised Return of Income within prescribed time limit while adjudicating the additional ground vide rectification order dated 15/07/2016 which was received by assessee on 18/08/2017.
4. Reasons assigned by the learned Commissioner of Income Tax (Appeals) are vague, wrong, insufficient and contrary to law."

3. The issue raised in ground No.1 & 2 is against the confirmation of disallowance to the tune of 4/5th of the renovation expenditure incurred by the assessee on a leased premises which was of revenue nature and wholly and exclusively incurred for the purpose of business of the assessee and also that Ld. CIT(A) has failed to consider and appreciate the assessee's submission as made before the appellate authority in the appellate proceeding.

4. After hearing both the parties and perusing the material on record, we find that the assessee has incurred expenditure by way of renovation on the leased property which was claimed as revenue expenditure by the assessee on the ground that expenditure was of revenue nature and incurred wholly and exclusively for the purpose of business of the assessee. We further find that the assessee has filed written submission before the Ld. CIT(A) to this effect that the said expenditure is of revenue nature along with bills and vouchers. The assessee has also relied on a decision of Hon'ble Delhi High Court in the case of CIT vs. Amway India

which was not considered by the appellate authority while passing the order. Moreover, the order passed by Ld. CIT(A) is very cryptic and brief. Under these circumstances, we are of the view that the matter should be restored to the file of the Ld. CIT(A) with the direction to decide the same as per facts and law after affording reasonable opportunity to the assessee. Accordingly, ground N.1 & 2 are allowed for statistical purposes.

5. The issue raised in ground No.3 is against the order of the Ld. CIT(A) holding that the revised return was not filed within the prescribed time while adjudicating the additional ground in the rectification order dated 15.07.2016 received by the assessee on 18.08.2017.

6. After hearing both the parties and perusing the material on record, we find that there is a contradiction in the findings of the Ld. CIT(A) in para 3 of the appellate order dated 18.12.2015. The Ld. CIT(A) mentioned that the original return was filed on 30.09.2009 whereas the revised return was filed on 23.11.2009 which appeared to be correct after perusing the copies of acknowledgement filed by the assessee in the paper book at page No.1 & 4 whereas while passing the order under section 154 of the Act arising out of the order dated 18.12.2015 which is the order under appeal before us. The Ld. CIT(A) in para 5 of the said order noted that the revised return has not been filed within the stipulated time as prescribed in the Income Tax Act and therefore the Ld. CIT(A) has not considered the same and thus rejected the additional

ground raised by the assessee. Since there are several infirmities in the observation of the Ld. CIT(A) on this issue, we deem it fit to restore the issue to the file of the Ld. CIT(A) to decide the same afresh after affording reasonable opportunity to the assessee and decide the same as per fact and law.

7. In the result appeal is allowed for statistical purposes.

Order pronounced in the open court on 28.06.2018.

**Sd/-
(C.N. Prasad)
JUDICIAL MEMBER**

**Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER**

Mumbai, Dated: 28.06.2018.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.