



IN THE INCOME TAX APPELLATE TRIBUNAL
"F" BENCH, MUMBAI
BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER

ITA no.4926/Mum/2016
(Assessment Year :2010-11)

IRIS Mercantile
(Earlier known as M.S. Touchstone)
12, Prasad Chamber, Opera House
Charni Road, Mumbai 400 004
PAN - AAFT2913K

..... Appellant

v/s

Dy. Commissioner of Income Tax
Central Circle-2, Mumbai

..... Respondent

Assessee by : None
Revenue by : Shri Rajeev Gubgotra

Date of Hearing - 09.08.2018

Date of Order - 31.08.2018

ORDER

PER SAKTIJIT DEY, J.M.

Aforesaid appeal has been filed by the assessee challenging order dated 11th July 2014, passed by the learned Commissioner (Appeals)-36, Mumbai, for the assessment year 2010-11.

2. When the appeal was called for hearing, no one was present on behalf of the assessee. On a perusal of the order sheet entries, it is noticed that on the earlier occasions when the appeal was fixed for

hearing, no one appeared on behalf of the assessee. Therefore, the Bench was compelled to adjourn the hearing to future dates. It is also noticed that notice of hearing issued to the assessee per registered post on 17th May 2018, was returned back unserved by the postal authorities. It is also noticed that, though, the appeal was filed in July 2016, till date the assessee has not inquired about the fate of the appeal and has repeatedly remained absent on the dates fixed for hearing. These facts reveal that the assessee is neither diligent nor interested in pursuing the present appeal. In view of the aforesaid, we are inclined to proceed with the hearing of the appeal ex-parte qua the assessee after hearing the learned Departmental Representative.

3. As could be seen, the assessee has raised three effective grounds. Ground no.1 is on violation of rules of natural justice by the learned Commissioner (Appeals) and grounds no.2 and 3 are on the merits of the disallowance made by the Assessing Officer and sustained by the learned Commissioner (Appeals).

4. Brief facts are, the assessee a partnership firm is stated to be engaged in the business of manufacturing and trading in diamond. For this purpose, it has set-up a unit in Special Economic Zone (SEZ), Surat. For the assessment year under dispute, assessee filed its return of income on 28th September 2008, declaring loss of ₹ 2,03,556, after

claiming deduction under section 10AA of the Income Tax Act, 1961 (for short "*the Act*"). During the assessment proceedings, the Assessing Officer while examining assessee's claim of deduction under section 10AA of the Act found that the assessee is engaged only in trading activity and was not doing any manufacturing. Further, on perusing the Balance Sheet of the assessee he found that except a fan / furniture and a safe, the unit was having no other asset. Thus, the Assessing Officer being of the opinion that the assessee is not involved in manufacturing activity called upon the assessee to explain why deduction claimed under section 10AA of the Act should not be disallowed. After considering the submissions made by the assessee the Assessing Officer was of the view that the assessee's contention that its activities will come within the definition of services in section 2(z) of The Special Economic Zones Act, 2005 is not acceptable, since, while inserting section 10AA of the Act in The Special Economic Zones Act, 2005, definition of certain terms as per The Special Economic Zones Act, 2005, including the term manufacture was incorporated in section 10AA of the Act. However, the definition of the term service as per section 2(z) was not included in section 10AA of the Act. The Assessing Officer observed, since the term services has not been defined in the Act, the definition of service as provided in section 2(z) of The Special Economic Zones Act, 2005, cannot be imported. After

further deliberation on the issue, the Assessing Officer ultimately concluded that the assessee is not eligible for deduction under section 10AA of the Act as it is not involved in any manufacturing activity. Thus, he disallowed assessee's claim of deduction under section 10AA of the Act. Further, the Assessing Officer on verification of the Profit & Loss account found that the assessee has debited ₹ 28,77,415, towards payment of Bank interest. The Assessing Officer observed that the assessee has advanced interest free loans to various parties. Alleging that the assessee failed to furnish documentary evidence in support of its claim that interest bearing fund was utilised for business purpose and interest free advances were made out of surplus fund, the Assessing Officer disallowed the interest expenditure of ₹ 28,77,415. Being aggrieved of the assessment order so passed, the assessee preferred appeal before the first appellate authority.

5. Since, the assessee did not appear before the learned Commissioner (Appeals) to represent its case, she dismissed the appeal of the assessee for non-prosecution without deciding the issues on merit.

6. The learned Departmental Representative submitted that the assessee has neither appeared before the learned Commissioner (Appeals) nor before the Tribunal to controvert the findings of the

Assessing Officer. Thus, he submitted, the assessment order passed being a well reasoned order, the disallowances made should be upheld.

7. We have considered the submissions of the learned Departmental Representative and perused the material on record. The first ground raised by the assessee is on the issue of violation of rules of natural justice by the learned Commissioner (Appeals) in deciding the appeal ex-parte. On a perusal of the impugned order of the learned Commissioner (Appeals), it is noticed that in spite of issuance of notice of hearing, the assessee neither appeared nor filed any written submission, therefore, the learned Commissioner (Appeals) disposed off the appeal ex-parte. Even before us also, the assessee has never bothered to appear on several occasions when this appeal was fixed for hearing. This is evident from the order sheet entries. Even hearing notices issued by the Registry by registered post in the address given by the assessee itself has returned back un-served. These facts clearly emphasize the callous and negligent attitude of the assessee with regard to the appeal filed it either before the learned Commissioner (Appeals) or before us. That being the case, we do not find any illegality in the decision of the learned Commissioner (Appeals) in disposing off the appeal ex-parte. This ground is dismissed.

8. As regards the issues relating to disallowance made by the Assessing Officer, we must observe at the outset that the Commissioner (Appeals) has not decided the issues on merit. Therefore, ordinarily we should have restored the matter back to her for deciding on merits. However, considering the non cooperative attitude of the assessee, we are of the view that no fruitful purpose would be served in remitting the matter back to Commissioner (Appeals). Therefore we proceed to decide the issues on merit. The first issue relates to disallowance of deduction under section 10AA of the Act. It is evident, the Assessing Officer in course of assessment proceedings on verification of material on record has found that the assessee has not carried out any manufacturing activity; therefore, he called upon the assessee to explain why deduction claimed under section 10AA of the Act should not be disallowed. In response, the assessee has justified the claim of deduction under section 10AA of the Act by stating that the activities carried on by it is in the nature of services as defined under section 2(z) of The Special Economic Zones Act, 2005. However, the Assessing Officer has rejected the aforesaid claim of the assessee with elaborate reasoning. Similarly, with regard to disallowance of interest expenditure, it is evident, as per the assessment order the assessee has not substantiated its claim that interest bearing fund was utilised for business purpose and interest

free advances were made out of surplus fund available. The factual position remains the same before us as well. Since, the assessee has failed to controvert the findings of the Assessing Officer with regard to the disallowances made either through proper documentary evidences or substantive argument, we are of the view that the disallowance made by the Assessing Officer deserves to be upheld. Accordingly, grounds raised are dismissed.

9. In the result, assessee's appeal is dismissed.

Order pronounced in the open Court on 31.08.2018

Sd/-
MANOJ KUMAR AGGARWAL
ACCOUNTANT MEMBER

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 31.08.2018

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

(Sr. Private Secretary)
ITAT, Mumbai