

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH : KOLKATA

[Before Hon’ble Shri M.Balaganesh, AM & Hon’ble Shri S.S.Viswanethra Ravi, JM]

I.T.A No. 177/Kol/2018

Assessment Year : 2004-05

M/s Delta Ltd.

-vs-

DCIT, Circle-1, Kolkata .

[PAN: AABCD 0629 C]

(Appellant)

(Respondent)

For the Appellant : Shri Rajeeva Kumar, Advocate

For the Respondent : Shri Pijush Mukherjee, Addl. CIT

Date of Hearing : 21.08.2018

Date of Pronouncement : 05. 09.2018

ORDER

Per M.Balaganesh, AM

1. This appeal by the assessee arises out of the order of the Learned Commissioner of Income Tax(Appeals)-22, Kolkata [in short the Id CIT(A)] in appeal no. 105/CIT(A)-22/2004-05/15-16/Kol dated 31.10.2017 passed by the DCIT, Circle-1, Kolkata [in short the Id AO] under section 144 of the Income Tax Act, 1961 (in short “the Act”) dated 09.11.2006 for the Assessment Year 2004-05.

2. The assessee has raised several grounds of appeal on merits for various additions/disallowances made by the Id. AO. We find that the assessee has raised preliminary ground that the Ld. CIT(A) erred in dismissing the entire appeal of the assessee without waiting for the remand report from the Id. AO. Hence the preliminary

question to be decided in this appeal is as to whether the Ld. CIT(A) was justified in deciding the appeal of the assessee without waiting for the remand report from the Id.AO and without adjudicating the evidences filed by the assessee before him, in the facts and circumstances of the case.

3. The brief facts of this issue is that the assessee is a public limited company and had filed its return of income for assessment year 2004-05 on 31.03.2005 declaring total loss of Rs. 3,24,29,630/- along with audited balance sheet, profit and loss account and tax audit report in form 3CD. In the course of assessment proceedings, the Id. AO observed that only details filed by the assessee were with regard to details of loan, interest, addition to fixed assets, bank accounts, sundry balances written off, processing charges, bulking charges, and gunny claims. Several other details that were called for by the Id. AO were not furnished by the assessee. Further no books of accounts together with details and vouchers were produced before the Id. AO. The assessee stated that the factory of the assessee company was closed and hence the books of accounts which were lying at the factory could not be produced before the Id. AO. This reply not proving satisfactory, the Id. AO proceeded to make several disallowances and additions in the assessment and determined the total income of the assessee at Rs. 2,60,700/-.

4. Before the Ld. CIT(A), the assessee submitted the ledgers for different expenditure for claim of Rs. 7,50,107/- , ledgers for repairing expenses of Rs. 2,49,75,708/-, ledger for miscellaneous expenses of Rs. 59,00,999/-, ledger for brokerage expenses of Rs. 5,80,616/-, ledger for processing charges of Rs. 31,04,455/-. The assessee in respect of claim of write off of Rs. 4,67,00,000/- towards sundry balances, submitted the copy of lawyer's letter stating that the lawyer had inspected the books of the company M/s B.T. W. Industries Ltd. and that the said company was wound up by the order of the Hon'ble Calcutta High Court by an order dated 22.07.1998 in C.P. No. 68/1996. The Ld. CIT(A) treated the aforesaid supporting documents as additional evidences and sought for the

remand report from the ld. AO. The remand report was not submitted by the ld. AO before the Ld. CIT(A). The Ld. CIT(A) accordingly proceeded to dismiss the appeal of the assessee by observing as under:

“09. DECISION: It has to be recorded that these documents bring additional and new evidence were sent to the Ld. AO for verification. However, no report has reached from the ld. AO despite protracted passage of time and several reminders. As the evidence has not been scrutinized by the ld. AO and not verified, the same remains unacceptable. The appellant has also not been able to show what efforts it has made before the ld. AO to help enable the submission of the Remand Report. As such I am unable to decide the matter in favour of the appellant. These grounds 1 and 2 are therefore dismissed.

10. As regards the other grounds of appeal nothing has been submitted by the appellant-company to counter the various findings of the ld. AO. As such the action of the ld. AO for these ground stands confirmed, and these ground stands dismissed.

In the final result, appeal filed by the appellant is treated as “dismissed”.”

Aggrieved the assessee is in appeal before us.

5. We have heard the rival submissions. At the outset, we find that the Ld. CIT(A) had indeed called for remand report from the ld. AO and that the ld. AO had not furnished the same. The ld. DR argued that the remand report could not be furnished by the ld. AO because the assessee did not present itself before the ld. AO during the remand proceedings. The ld. AR prayed for one more opportunity before the Ld. CIT(A) by asking that the Ld. CIT(A) should have verified the books filed before him by himself, if the remand report was not submitted by the ld. AO. He argued that this is mandate provided in the Statute inasmuch as the Ld. CIT(A) possess co-terminus powers with that of ld. AO. We find lot of force in this argument of the ld. AR and we accordingly deem it fit and appropriate and in the interest of justice and fair play to set aside the entire appeal to the file of the Ld. CIT(A) for de novo adjudication in accordance with law, uninfluenced by earlier decision taken by him in this regard. Since the appeal of

the assessee is set aside to the file of the Id CITA for denovo adjudication on preliminary ground raised hereinabove, we refrain to give our opinion on other grounds raised by the assessee. Accordingly, grounds raised by the assessee are allowed for statistical purposes.

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

Order pronounced in the Court on 05. 09.2018

Sd/-

[S.S. Viswanethra Ravi]
Judicial Member

Sd/-

[M.Balaganesh]
Accountant Member

Dated : 05. 09.2018

SB, Sr. PS

Copy of the order forwarded to:

1. M/s Delta Ltd, 4, Council House Street, Kolkata-700001.
2. DCIT, Circle-1, Kolkata, Aayakar Bhawan, P-7, Chowringhee Square, Kolkata-700069.
- 3..C.I.T.(A)-
4. C.I.T.- Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By Order

Senior Private Secretary
Head of Office/D.D.O., ITAT, Kolkata Benches