



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

**BEFORE SHRI R.C.SHARMA, AM &  
SHRI SANDEEP GOSAIN, JM**

**ITA No.4467/Mum/2016  
(Assessment Year :2011-12)**

Rupani Dyes Intermediates Pvt. Ltd. 312, Exim Link Building, Opp Indira Container Yard, Mulund Goregaon Link Road, Nahur (W), Mumbai – 400 076	Vs.	ITO Ward-10(3)(3) Aayakar Bhavan, M.K. Road, Churchgate, Mumbai – 400 020
<b>PAN: AAACR2944R</b>		
<b>Appellant)</b>	<b>..</b>	<b>Respondent)</b>

Assessee by	Shri Paresh Shaparia (AR)
Revenue by	Shri Majoj Kumar Singh (DR)
<b>Date of Hearing</b>	<b>21/08/2018</b>
<b>Date of Pronouncement</b>	<b>31/08/2018</b>

**आदेश / ORDER**

**PER R.C.SHARMA (A.M):**

This is an appeal filed by the assessee against the order of CIT(A)-24, Mumbai dated 11/03/2016 for A.Y.2011-12, in the matter of ex-parte order passed by the AO u/s.144 of the IT Act.

2. Rival contentions have been heard and record perused.
3. Facts in brief are that assessee is engaged in the business of manufacturing and trading of dyes and chemicals. During the year under consideration, the assessee has not carried any business. However, it has incurred some administrative expenditure and also w/off some sundry debtors on becoming unrecoverable. Thereby incurring a loss of Rs.

7,56,542/- in the Profit & Loss account. The books of accounts have been presented to the AO for verification. Banks statement was submitted. The main director of the assessee Mr. B. K. Vig has expired a few months back and since the company was not in operation some of the documents and statements sought by AO could not be traced and submitted and as such details of the sale of the immovable property was not filed.

4. The AO passed ex-parte order under section 144 and made various additions on account of bad debts written off, Short Term Capital Gain, disallowance under section 41(1) etc. By the impugned order, the CIT(A) confirmed the action of the AO, against which assessee is in further appeal before us.

5. At the outset, the AR placed on record an affidavit explaining the reasons for not appearing before the AO. He contended that Managing Director of the company expired on 18.04.2013 after prolonged illness therefore, appearance before the AO could not be effected with the documents asked by him. He also invited our attention to the computation of income filed for immediately preceding A.Ys, wherein capital gain was already offered, and the same was again taxed by the AO during the year while passing ex-parte order under section 144.

6. On the other hand, DR relied on the order of the lower authorities.

7. We have considered the rival contentions and carefully gone through the orders of authorities below. The affidavit filed by the assessee

for explaining the reasons for non-appearance before the AO reads as under:

*“I, SELVA LAKSHMANAN PERUMAL, Director of RUPANI DYES INTERMEDIATES PVT LTD, having office at 312, Exim Link Building, Opp Indira Container Yard, Mulund Goregaon Link Road, Nahur (West), Mumbai - 400076, aged about 37 years, do solemnly affirm that:*

1. *Rupani Dyes Intermediates Pvt Ltd., (hereinafter referred as Appellant) is regularly assessed to tax vide PAN. AAACR2944R in the charge of ITO, Ward-1 0(3)(3), Mumbai*

2. *The return of Income was e filed on 16.11.2011 declaring loss of Rs.7,11,646/-.*

3. *Mg Director of the Company, Mr. B K Vig at the age of 70 years expired on 18.04.2013 after prolonged illness. Mr. B K Vig and his family members were the substantial shareholders of the Company holding 99.9 % shares.*

4. *The appellant had no sales turnover for the year under consideration. The business of the appellant was affected due to the ill health of Late Mr. B K Vig who was the Mg. Director and involved in the day to day operations, finance, accounts of the appellant.*

5. *Due to the death of Mr. B K Vig the business of the appellant had come to a standstill and there were no employees of the company. Due to no employees of the appellant and since the records were not readily available, in the course of assessment proceedings and appellate proceedings before the CIT (A), the appellant could not produce evidence and records.*

6. *The order was passed u/s 144 on 20.3.2014 assessing the income at Rs. 1,23,89,000/-.*

*The difference between the returned income and assessed income was on account of:*

*a) Disallowance of Bad Debts amounting to Rs.6,45,925/-.*

*b) Treatment of outstanding statutory dues of ESIC as income u/s 2(24)(x) of Rs. 1,25,335/-.*

*c) Treating the sale consideration on sale of immovable properties of Rs. 1,03,35,500/- as Short Term Capital Gains.*

*d) Adhoc disallowance u/s 41(1) of Rs. 19,94,788/- being 10% of the outstanding Sundry Creditors of Rs. 1,99,47,876/-.*

7. *The CIT (A) passed order dated 11.3.2016 confirming all the disallowances/additions due, to non -submission of records to*

*substantiate the grounds of appeal. An appeal was filed before the Hon. IT AT on 11.03.2016 against the order of the CIT (A).*

8. *An affidavit is being made to admit the new evidences as the appellant was prevented by sufficient cause from producing the evidence which it was called upon to produce by the lower authorities.*

9. *The new additional evidences are as per the Paper Book. In paper book, new evidences are produced for adjudicating the grounds of appeal.*

10. *In the interest of natural justice and reasonable cause, it was requested to kindly admit the new evidences.*

8. It is clear from the affidavit that non-appearance before the AO and not furnishing the information required by the AO was attributable to the long illness of the Managing Director of the company who ultimately expired on 18.04.2013. During the year under consideration, there was no sales turnover, since business was affected due to long illness of B.K. Vig, Managing Director of the company. Due to the death of Managing Director after long illness, there were no employees of the company. Thus, at the time, AO asked for the documents, same were not traceable and readily available. We also found that major addition made on account of capital gain have already been offered by the assessee in the immediately preceding year, which require examination and verification on the part of the AO. Considering the totality of the facts and circumstances of the case and in the substantial interest of justice, we restore the matter back to the file of the AO for deciding afresh after giving due opportunity to the assessee. We further direct the assessee to appear before the AO within a

period of two months from the date of receipt of this order. We direct accordingly.

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

Order pronounced in the open court on this 31/08/2018

**Sd/-**  
**(SANDEEP GOSAIN)**  
JUDICIAL MEMBER

**Sd/-**  
**(R.C.SHARMA)**  
ACCOUNTANT MEMBER

Mumbai; Dated 31/08/2018  
SK PS

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

सत्यापित प्रति //True Copy//

(Asstt. Registrar)  
ITAT, Mumbai