

*IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH "SMC" KOLKATA*

Before **Shri S.S, Godara, Judicial Member**

ITA No.1323/Kol/2018 Assessment Year:2013-14
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ITO Ward-12(4) Aayakar Bhawan, P-7, Chowringhee Square, Kolkata-69	<u>बनाम /</u> <u>V/s.</u>	M/s Roger Engineering Pvt. Ltd., P-26, Transport Depot, Kolkata-700088 [PAN No.AACCR 8553 Q]
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

अपीलार्थी की ओर से/By Appellant	Shri Kapil Mondal, JCIT-DR
प्रत्यर्थी की ओर से/By Respondent	None
सुनवाई की तारीख/Date of Hearing	18-09-2018
घोषणा की तारीख/Date of Pronouncement	28-09-2018

आदेश /O R D E R

This Revenue's appeal for assessment year 2013-14 arises against the Commissioner of Income-tax (Appeals)-4, Kolkata's order dated 12.03.2018 passed in case No.01/CIT(A)-4/2016-17/Kol involving proceedings u/s. 143(3) of the Income Tax Act, 1961; in short 'the Act'.

Case called twice. None appears at assessee's behest despite service of notice.

It is accordingly proceeded *ex parte*.

2. I notice at the outset that the Revenue's only contention in its grounds of appeal is that CIT(A) has erred in law in directing the Assessing Officer to verify the relevant factual position in violation of u/s 251 (1)(a) of the Act omitting the clinching expressing "or he made set aside" with effect from 01.06.2001 vide Finance Act 2001. I find that the assessee had raised multiple grounds in lower appellate proceedings whilst challenging the Assessing Officer's action disallowing / adding rent amount of ₹49,45,359/- u/s 40(a)(ia), u/s 14A r.w.s 8D disallowance amount of ₹2,46,038/- income from undisclosed sources addition of ₹2,29,867/- disallowance of brought

forward business loss and unabsorbed depreciation of ₹41,27,366/- and ₹2,66,097/-; respectively. The CIT(A) has admittedly directed the Assessing Officer to conduct necessary factual verification. This is what leaves the Revenue aggrieved. Its sole legal plea is that sec. 251(1)(a) after its amendment hereinabove has taken away such remand power.

3. I have given my thoughtful consideration to Revenue's above legal plea. There is no dispute that the legislature has taken away such remand power out of CIT(A)'s jurisdiction. The fact also remains that this is not the Revenue's case that such factual verification directed to the Assessing Officer is in any way not required. Be that as it may, I express my disagreement with the CIT(A)'s remand direction in principle as per the above legal position. I deem it appropriate to exercise the tribunal's jurisdiction for remitting the issue back to the Assessing Officer for conducting necessary factual verification. The Revenue's sole substantive grievance is accepted for statistical purposes.

4. This Revenue's appeal is allowed for statistical purposes.

Order pronounced in open court on 28/09/2018

Sd/-
(S.S. Godara)
Judicial Member

*Dkp/Sr.PS

दिनांक:- 28/09/2018 कोलकाता

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-ITOWard-12(4),AayakarBhawan, P-7,Chowringhee Sq. Kol.69
2. प्रत्यर्थी/Respondent-M/s Roger Engineering Pvt. Ltd. P-26, Transport Depot, Kol-88
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

By order/आदेश से,

/True Copy/

Sr. Private Secretary, Head of Office/DDO
आयकर अपीलीय अधिकरण,
कोलकाता ।