

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

श्री डी. करुणाकरा राव, लेखा सदस्य, एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष ।
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA No.727/PUN/2016

निर्धारण वर्ष / Assessment Year : 2012-13

Dekinsons Associates,
1137/14, Harbhat Road,
Sangli - 416416

PAN : AAefd7988G

.....अपीलार्थी / Appellant

बनाम / V/s.

Commissioner of Income Tax-1,
Kolhapur

.....प्रत्यर्थी / Respondent

Assessee by : N O N E
Revenue by : Shri S.B. Prasad

सुनवाई की तारीख / Date of Hearing : 15-11-2018

घोषणा की तारीख / Date of Pronouncement : 19-11-2018

आदेश / ORDER

PER VIKAS AWASTHY, JM :

This appeal by the Revenue is directed against the order of Pr. Commissioner of Income Tax-1, Kolhapur dated 07-03-2016 passed u/s. 263 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") for the assessment year 2012-13.

2. Notice of hearing of the appeal was duly served on the assessee. Despite service of notice, none appeared to represent the assessee nor any letter of adjournment has been filed. A perusal of case file shows that the first notice of appeal was sent to the assessee through RPAD for 09-04-2018. On the said date none appeared on behalf of the assessee. The appeal was adjourned to 20-06-2018. Fresh notice of appeal was sent to the assessee through RPAD. The notice of appeal was duly served as is evident from the acknowledgment card available on record. However, on 20-06-2018 the Bench did not function and the appeal was adjourned to 12-09-2018. On 12-09-2018 again none appeared on behalf of the assessee to defend the appeal. The appeal was adjourned to 15-11-2018 and fresh notice of hearing was issued to the assessee. The notice of hearing of appeal for 15-11-2018 was sent to the assessee through RPAD on 26-09-2018. The acknowledgment card available on record indicates that the notice was duly served. However, despite service of notice today again none is present to represent the assessee. It seems that the assessee is not keen to prosecute the appeal. Under such circumstances we are constrained to take up the appeal of assessee for hearing with the assistance of ld. DR and material available on record.

3. The brief facts of the case as emanating from records are : The assessee is a wholesale distributor of medicines. The assessee filed its return of income for the impugned assessment year on 01-05-2013 declaring total income of Rs.4,46,800/-. The case of the assessee was selected for scrutiny through CASS, accordingly statutory notice u/s. 143(2) of the Act was issued to the assessee on 02-09-2014. The Assessing Officer vide assessment order dated 17-03-2015 after making addition of Rs.1,30,000/- assessed the total income of the assessee as Rs.5,76,800/-.

Thereafter, Pr. Commissioner of Income Tax invoked the provisions of section 263 and issued notice to the assessee on 25-08-2015. The Pr. Commissioner of Income Tax vide impugned order held that the Assessing Officer has erred in not disallowing assessee's claim of sales promotion and event expenses Rs.36,51,200/- as the same are in violation of CBDT Circular No. 5/2012 dated 01-08-2012. The Pr. Commissioner of Income Tax further observed that excess remuneration to the partners Rs.2,06,222/- has been allowed. The Commissioner of Income Tax held the assessment order dated 17-03-2015 passed u/s. 143(3) as erroneous and prejudicial to the interest of revenue. Against the order of Pr. Commissioner of Income Tax passed under revision jurisdiction the assessee is in appeal before the Tribunal.

4. Shri S.B. Prasad representing the Department submitted that the assessee was non-cooperative before the Pr. Commissioner of Income Tax, as well. Several notices were issued to the assessee, however, no one bothered to attend hearing on behalf of the assessee. There was lack of co-operation from the assessee in completing the proceedings u/s. 263 of the Act. The ld. DR vehemently defended the order of Pr. Commissioner of Income Tax and to further support the same placed reliance on the following decisions :

- i. Malabar Industrial Co. Ltd. Vs. Commissioner of Income Tax, 243 ITR 83 (SC);
- ii. Virbhadra Singh (HUF) Vs. Principal Commissioner of Income Tax, 400 ITR 530 (HP);
- iii. Gopisons Developers Pvt. Ltd. Vs. ACIT in ITA No. 356/PN/2012 for assessment year 2006-07 decided on 03-07-2013.

5. We have heard the submissions made by Id. DR and have perused the impugned order. There is no material on record controverting the findings of Pr. Commissioner of Income Tax. Under such circumstances we uphold the impugned order and dismiss the appeal of assessee.

6. In the result, the appeal of assessee is dismissed.

Order pronounced on Monday, the 19th day of November, 2018.

Sd/-	Sd/-
(डी. करुणाकरा राव/D. Karunakara Rao)	(विकास अवस्थी / Vikas Awasthy)
लेखा सदस्य / ACCOUNTANT MEMBER	न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 19th November, 2018

RK

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. Commissioner of Income Tax – 1, Kolhapur
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, “ए” बेंच,
पुणे / DR, ITAT, “A” Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति // True Copy//

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary,
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune