

IN THE INCOME TAX APPELLATE TRIBUNAL "D", BENCH KOLKATA

BEFORE SHRI S. S. GODARA, JM & DR. A. L. SAINI, AM

आयकरअपीलसं./ITA No.2001/Kol/2017

(निर्धारण वर्ष / Assessment Year: 2012-13)

Mondal Construction Co. Ltd. Uttarayan, P.S+P.O- Chinsurah, Dist- Hooghly.	Vs.	ACIT, Circle-23, Hooghly Aayakar Bhawan, G.T. Road, Khadinamore, Chinsurah, Hooghly- 712101.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAECM 1125 F		
(Appellant)	..	(Respondent)

Appellant by : None
Respondent by : Shri K. Mondal, Sr. DR

सुनवाईकीतारीख/ Date of Hearing : 25/09/2018

घोषणाकीतारीख/Date of Pronouncement : 07/12/2018

आदेश / ORDER

Per Dr. A. L. Saini:

The captioned appeal filed by the assessee, pertaining to Assessment Year 2012-13, is directed against an order passed by the Ld. Commissioner of Income Tax (Appeals)-6, Kolkata in appeal No.65/CIT(A)-6/Kol/2015-16 dated 25.05.2017 which in turn arises out of an assessment order passed by the Assessing Officer u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') dated 30.03.2015.

2. At the time of hearing none appeared on behalf of assessee in spite of issuance of notice for hearing more than one occasion and Ld. Departmental Representative (DR), was present for the appellant Revenue. In the absence of any appearance by the assessee, the appeal is being disposed of ex parte qua the

assessee, after hearing Ld. DR for the Revenue on merits in terms of Rule 24 of the Income Tax Appellate, Tribunal Rules, 1963.

3. The grievances raised by the assessee are as follows:

“1. THAT facts and circumstances of the case, ld. CIT(A) was not justified in disallowing sum of Rs.10,99,907/- debited on account of discount on sale of flat.

2. That on the facts and circumstances of the case ld. CIT(A) was not justified for not giving proper opportunity to cross examine the parties who has received the discount.

3. The CIT(A) grossly erred on facts and in law in passing the impugned order without giving a sufficient and a proper opportunity to the assessee to be heard. The impugned order is passed in violation of principles of natural justice.”

4. The brief facts qua the issue are that the assessee company is engaged in a trading and development of property and derives its income from the said business. Its filed its return on 28.09.2012 for the A.Y 2012-2013 declaring total income of Rs.80,29,984/- as business income. The case of the assessee was selected for scrutiny and notices u/s 143(2) and 142(1) were issued.

In response to these notices, the assessee's authorized Accountant appeared on several occasions and filed several details and submissions. Then ld. A.O completed the assessment by passing an order u/s 143(3) of the I.T. Act, 1961, made the addition on account of discount on sale of flat. The Ld. A.O while completing the assessment u/s 143(3) of the I.T. Act, 1961, disallowed Rs.10,99,907/- debited by the assessee in its profit and loss account on account of discount on sale of flats, stating that some of the parties whom the discount has been given had informed that no discount received from assessee. Hence, the ld. Assessing Officer made addition of Rs.10,99,907/-.

5. On appeal, the ld. CIT(A) confirmed the addition made by Assessing Officer. Aggrieved the assessee is in appeal before us.

6. After hearing the ld. DR for the Revenue and the written submissions submitted by the assessee which is available on record, we note that ld. CIT(A) was not justified in disallowing the sum of Rs.10,99,907/- debited on account of discount on sale of flat. We note that assessee had debited a sum of Rs.10,99,907/- in the profit & loss account on account of discount on sale of flat. However, the Assessing Officer disallowed the said discount stating that some of the parties to whom the discount had been given, had informed that no discount received from assessee. We note that the said addition has been made without taking the full details of payment made by the assessee and without giving the assessee the proper opportunity to cross examine the respective parties who denied the receipt of this discount. We note that considering the nature of the assessee's business, the Assessing Officer has failed to bring any cogent evidence to show that the amount debited by the assessee to the tune of Rs.10,99,907/- is bogus. The assessee has incurred the said expenses for the purpose of business, therefore, he is eligible to claim the deduction on account of discount allowed on sale of flat. We note that it is decision of the business-men how much discount is to be allowed to a particular person and it is the prerogative of the assessee to run the business as per the business strategy adopted by the assessee. The Revenue cannot sit on the arm chair of the business-men and decide how much expenses should be incurred or how much discount should be offered to the customer. Since, some of the customers, who denied that no discount was received by them, does not mean that assessee's claim is bogus. The ld. Assessing Officer has not given an opportunity to cross-examine these customers, who denied the receipt of discount. We note that not allowing the assessee to cross-examine the witness by the adjudicating authority, though the statements of those witnesses were made the basis of the impugned addition, is a serious flaw, which makes the order nullity. For that we rely on the

judgment of the Hon'ble Supreme Court in the case of Andaman Timber Industries 281 CTR 214 (SC). Therefore, considering the entirety of facts and circumstances of the case, we delete the addition of Rs.10,99,907/-.

7. In the result, the appeal filed by the assessee is allowed.

Order is pronounced in the open court on 07.12.2018.

Sd/-
(S. S. GODARA)

न्यायिक सदस्य / JUDICIAL MEMBER

कोलकाता /Kolkata;

दिनांक/ Date: 07/12/2018

(RS, Sr.PS)

Sd/-
(A. L. SAINI)

लेखा सदस्य / ACCOUNTANT MEMBER

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant- Mondal Construction Co. Ltd.
2. प्रत्यर्थी/ The Respondent- ACIT, Circle-23, Hooghly
3. आयकरआयुक्त(अपील) / The CIT(A),
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, कोलकाता/ DR, ITAT, Kolkata
6. गार्डफाईल / Guard file.
सत्यापितप्रति

True Copy

By Order

Assistant Registrar,
I.T.A.T, Kolkata Benches,
Kolkata.