

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCH 'B', JAIPUR

श्री विजय पाल रॉव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष  
BEFORE: SHRI VIJAY PAL RAO, JM AND SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 942/JP/2018  
निर्धारण वर्ष/Assessment Year : 2014-15.

M/s. Supra Craft Packaging (P) Ltd., E-94, Phase-I, Industrial Area, Bhiwadi, Alwar.	बनाम Vs.	The ACIT Circle-2, Alwar.
स्थायी लेखा सं./जीआईआर सं./PAN No. AACCS 7209 N		
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से / Assessee by : Shri P.C. Parwal (CA)  
राजस्व की ओर से / Revenue by: Smt. Anuradha (JCIT)

सुनवाई की तारीख / Date of Hearing : 22.01.2019.  
घोषणा की तारीख / Date of Pronouncement : 23/01/2019.

आदेश / ORDER

PER VIJAY PAL RAO, JM :

This appeal by the assessee is directed against the order dated 29<sup>th</sup> May, 2018 of Id. CIT (A), Alwar for the assessment year 2014-15. The assessee has raised the following grounds :-

1. That the Id. Assessing Officer has erred in law as well as on the facts and circumstances of the case in making addition by invoking the provision of section 144 of the Income Tax Act, 1961 and Id. Commissioner of Income-Tax (Appeals), Alwar has erred in sustaining the same by not deciding the issue on merit.
2. That the Id. Assessing Officer has erred in law as well as on the facts and circumstances of the case in making addition of Rs.40,00,000/- by invoking the provision of section 68 of the Income Tax Act, 1961 on the basis that the assessee company failed to offer any explanation with regard to the amount received on account of share premium and the Id. Commissioner

of Income Tax (Appeals), Alwar has erred in sustaining the same by not deciding the issue on merit.

3. That the Id. Assessing Officer has erred in law as well as on the facts and circumstances of the case in making addition of Rs. 20,940/- by invoking the provision of section 36(1)(va) r.w.s. 2(24)(x) on the basis that the assessee company deposited the concerned amount after the due dates mentioned in the respective acts of the relevant statute and the Id. Commissioner of Income-Tax (Appeals, Alwar has erred in sustaining the same by not deciding the issue on merit.
4. The assessee reserves the right to add, alter, modify, delete or amend all or any of the grounds of appeal before or at the time of hearing of appeal.

2. The assessee is a private limited company and engaged in the business of manufacturing of corrugated boxes. The assessee filed its return of income on 1<sup>st</sup> December, 2014 declaring loss of Rs. 90,44,446/-. During the scrutiny assessment, the Id. A/R of the assessee Shri V.K. Dutta, CA appeared before the AO at the initial stage and filed the requisite details. However, subsequently he did not appear before the AO and the assessment order was passed under section 144 of the IT Act at a loss of Rs. 50,23,510/-. Since the AO has made certain disallowances under section 68 as well as under section 36(1)(va) of the IT Act, therefore, the assessee challenged the action of the AO before the Id. CIT (A). However, since nobody appeared on behalf of the assessee before the Id. CIT (A), therefore, the appeal of the assessee was dismissed ex parte.

3. Before us the Id. A/R of the assessee has submitted that due to some confusion between the assessee company and its Authorized Representative, he could not appear before the AO as well as before the Id. CIT (A) and consequently the assessment order was passed ex parte and appeal filed by the assessee was also

dismissed by the Id. CIT (A) ex parte. He has filed an affidavit of the Director of the assessee company and explained the reasons for non appearance before the Id. CIT (A). The Id. A/R has explained that one Shri Apoorv Maheshwari working as Chief Accounts Officer of the assessee was not keeping good health during the period December, 2017 to March, 2018. Since he was looking after the tax matters and also in touch with the Authorized Representative to follow up the appeals and tax matters, however, due to his ill health and irregular attendance in the office, the Authorized Representative was not provided with the requisite information and details and consequently the assessee lost the track of the matter and nobody attended before the Id. CIT (A). Therefore, the Id. A/R has submitted that since the assessment order was also passed ex parte and appeal of the assessee was dismissed by the Id. CIT (A) in limine without deciding on merit, the matter may be remitted to the record of the AO for deciding afresh after giving an opportunity of hearing to the assessee.

4. On the other hand, the Id. D/R has vehemently opposed to the request of the assessee and contended that it is not a matter of bonafide mistake or reasonable explanation but it is a case of gross negligence on the part of the assessee not appearing either before the AO or before the Id. CIT (A). The assessee being a company cannot take a plea that due to irregular attendance of one of its employees nobody has appeared in the proceedings before the AO as well as before the Id. CIT (A) when they have authorized the Representative to appear before the AO as well as before the Id. CIT (A).

5. We have considered the rival submissions as well as the relevant material on record. We note that after giving the several opportunities of hearing, the Id. CIT

(A) finally dismissed the appeal of the assessee in limine without going into the merits of the grounds raised by the assessee. The order of the Id. CIT (A) in para 3.1 to 3.3 are as under :-

*" 3.1. In this case, notices u/s 250 was issued to the appellant on several occasions fixing the hearing on 02.01.2018, 01.02.2018, 21.02.2018, 16.03.2018 and 18.04.2018. No one attended. Therefore, I am constrained to decide the appeal on the basis of evidences on record.*

*3.2. I have further noted that no statement of facts was filed along with Form No. 35. The appeal has also been filed late by 08 days.*

*3.3. In absence of any submissions by the appellant in support of its claims, I have relied upon the facts mentioned in the assessment order. After considering the same, I see no reason to interfere with the assessment order passed by the AO. Accordingly, the appellant's grounds of appeal are dismissed."*

Thus it is clear that the Id. CIT (A) has not decided the appeal of the assessee on merit but it was dismissed in limine. The assessee has explained the reasons for not attending the proceedings before the Id. CIT (A) in the affidavit of one Shri Karn Bhugra, Director of the assessee company in para 5 as under :-

*" 5. That Mr. Apoorv Maheshwari was working in our company on the post of Chief Accounts Officer. He had joined our company on said position w.e.f. 01.07.2017. That during the period of Dec 2017 to Mar 2018 Mr. Apoorv Maheshwari was very irregular in attending office due to serious health issues. During the same period our Authorised*

*Representative in the above mentioned appeal had been following up from him to arrange the information/documents required to be furnished in the hearings before the Hon'ble CIT (Appeals). However, Mr. Apoorv kept on assuring him that he will provide the required information to the Authorised Representative but the details were not provided by him. Unfortunately, this did not come to the knowledge of the management. For these reasons hearing before Id. CIT (A) could not be attended."*

Having considered the reasons explained by the assessee as well as in the facts and circumstances of the case that the assessee has neither attended the proceedings before the AO nor before the Id. CIT (A), we find that it is not a simple case of reasonable cause for not attending the matters before the AO as well as before the Id. CIT (A) but the assessee was negligent in attending the tax matters. However, since the Id. CIT (A) has not decided the appeal on merits and the AO has also passed the assessment order ex parte under section 144 of the Act, therefore, subject to the cost of Rs. 5,000/-, we set aside the matter to the record of the AO for deciding the same afresh after giving an opportunity of hearing to the assessee.

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

Order is pronounced in the open court on 23/01/2019.

Sd/-  
(विक्रम सिंह यादव)  
(VIKRAM SINGH YADAV )  
लेखा सदस्य/Accountant Member

Sd/-  
(विजय पाल रॉव )  
(VIJAY PAL RAO)  
न्यायिक सदस्य/Judicial Member

Jaipur

Dated:- 23/01/2019.

Das/

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

1. The Appellant- M/s. Super Craft Packaging Pvt. Ltd., Alwar.
2. The Respondent – The ACIT, Circle-2, Alwar.
3. The CIT(A).
4. The CIT,
5. The DR, ITAT, Jaipur
6. Guard File (ITA No. 942/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar

