

**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH "B", LUCKNOW**

**BEFORE SHRI A.D JAIN, VICE PRESIDENT AND
SHRI T.S. KAPOOR, ACCOUNTANT MEMBER**

ITA No.415 & 416/LKW/2018
A.Ys. 2012-13 & 2013-14

M/s Rahman Industries Ltd. 184/167, Wazidpur, Jajmau, Kanpur 208010 PAN AAACR6862N	Vs.	DCIT-IV, Kanpur
(Appellant)		(Respondent)

Appellant by	Shri Rakesh Garg, Advocate
Respondent by	Shri C.K. Singh, DR
Date of hearing	19/02/2019
Date of pronouncement	22/02/2019

ORDER

PER: A.D. JAIN, VICE PRESIDENT:

These appeals are filed by the assessee for Assessment Years 2012-13 and 2013-14, involving common issues. As such, they are being disposed of by this composite order. Details, for convenience, are being taken from ITA No.415/Lkw/2018 in the case of M/s Rahman Industries Ltd. The following grounds have been raised in ITA No.415/Lkw/2018:

- “1. *Because the CIT(A) has erred on facts and in law in summarily dismissing the appeal ex-parte without giving proper opportunity of being heard.*
2. *Because the CIT(A) has failed to appreciate that the last notice fixing the hearing of the case for 28.11.2017 was issued on 14.11.2017 and the order has been passed on 04.04.2018 without issuing any further notice of hearing,*

while as per the CBDT Circular/Instruction No. 20/2003 dated 23.12.2003, the order should have been passed within fifteen days from the date of hearing, the order passed ex-parte is bad in law and be quashed.

3. *Because the CIT(A) has failed to appreciate the facts and circumstances of the case and he should have passed a speaking order based on Statement of Facts and Grounds of Appeal as mentioned in the Memorandum of Appeal and the written submissions filed.*
4. *Because on a proper consideration of facts and circumstances of the case, the order passed by the CIT(A) dismissing the appeal in default is bad in law, unjustified and be quashed.*
5. *Because the authorities below have erred on facts and in law in making and upholding the addition of Rs.26,12,241/- being transfer pricing adjustments on the basis of the report of the TPO, the addition is contrary to the provisions of law, misconceived, unjustified, unwarranted and be deleted.*
6. *Because the authorities below have failed to demonstrate as to how the computation provided in the audit report in 3CEB was erroneous, not in accordance with the accounting norms or was erroneous in computation of arms length price, the adjustments made by the Assessing Officer and upheld by the CIT(A) be deleted.*
7. *Because the authorities below have erred on facts and in law in making and upholding the addition of Rs.14,62,264 by applying the provisions of section 14A of the Act read with Rule 8D, which on proper appreciation of facts would be found to be erroneous, in as much as there being neither any expenditure incurred for earning any tax free income, nor there being any tax free income, the addition made by the Assessing Officer and upheld by the CIT(A) is misconceived, unwarranted and unjustified and be deleted.*
8. *Because the authorities below have erred on facts and in law in making and upholding the addition of Rs.17,04,884/- being expenditure claimed as testing charges on account of Footwear Design and Development Institute debited under the head Foreign Research and Development Expenses by wrongly applying the provisions of section 195 of the Act, 1961.*
9. *Because the authorities below have erred on facts and in law in holding that though the expenditure of Rs.17,04,884/-*

having been incurred for the purpose of business, tax under section 195 should ought to have been deducted, inspite of the fact that the said amount is not income chargeable to tax in India. The disallowance made by the Assessing Officer and upheld by the CIT(A) be deleted.

10. *Because the authorities below have erred on facts and in law in making and upholding the disallowance of Rs.36,90,099/- u/s 36(1)(va) of the Act, by wrongly holding that the said amount having been not paid within the due date, would constitute income of the assessee. The disallowance made by the Assessing Officer and upheld by the CIT(A) is misconceived in as much as all payments made before the filing of the return of income are to be considered and is to be allowed. The disallowance made be deleted.*
11. *Because in any case and in all circumstances of the case the provisions of section 43B are not applicable, the disallowance of Rs.36,90,099/- made by the Assessing Officer and upheld by the CIT(A) is misconceived, bad in law and be deleted.”*

2. By virtue of the impugned order, the Id. CIT(A) has dismissed the assessee's appeal for non prosecution, observing that notices dated 03.02.2017, 05.04.2017, 11.09.2017 and 14.11.2017 for compliance on 15/02/2017, 19.04.2017, 26.09.2017 and 28.11.2017 were served on the e-mail address submitted by the assessee while e-filing the appeal; that however, no written submission or paper book had been filed in support of any of the grounds of appeal taken; and that none had attended on behalf of the assessee. Such service of notices has, however, been disputed by the assessee

3. We have heard the rival parties and have gone through the material placed on record. We noted that the Id. CIT(A) has passed the

ex-parte order as according to him, nobody has appeared on the date when the appeal was fixed for hearing before him. We also noticed from the order of the CIT(A) that he has summarily decided the appeal of the assessee without giving any cogent reason and his order is non speaking order. Under these circumstances, we feel that one more opportunity should be given to the assessee as Id. CIT(A) has not decided the appeal on merits. The provision of section 250 which deals with the procedure in appeal before the Id. CIT(A), allows a right to an assessee to be heard at the time of hearing of appeal. Even the natural justice demands that no appeal should be disposed of without being heard the party or without giving him the proper and sufficient opportunity. We, therefore, in the interest of justice and fair play to both the parties, set aside the order of CIT(A) and restore the appeal to the file of the CIT(A) with the direction that the CIT(A) shall refix the said appeal and decide the appeal afresh after giving proper and sufficient opportunity of being heard to the assessee. The assessee is also directed to be present on the date of hearing fixed by Id. CIT(A) and not to seek undue adjournment and co-operate with Id. CIT(A) in disposing of the appeal.

4. Facts being similar in the other appeal, i.e., ITA No.416/Lkw/2018, this appeal is also restored to the file of the Id. CIT(A), with the same observations as given in ITA No.415/Lkw/2018.

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

Order pronounced in the open court on 22/02/2019.

**Sd/-
(T.S. Kapoor)
Accountant Member**

**Sd/-
(A.D. Jain)
Vice President**

Aks –
Dtd. 22/02/2019

Copy of order forwarded to:

<i>(1) The appellant</i>	<i>(2) The respondent</i>
<i>(3) Commissioner</i>	<i>(4) CIT(A)</i>
<i>(5) Departmental Representative</i>	<i>(6) Guard File</i>

By order

Assistant Registrar