

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES 'A' JAIPUR

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

आयकर अपील सं./ ITA. No. 975/JP/2018
निर्धारण वर्ष / Assessment Year : 2011-12

M/s Ashoka Industries F -143, Road No. 7, Bindayaka Industries Area, Jaipur	बनाम Vs.	Dy. Commissioner of Income Tax, Circle-07, Jaipur
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: AACFA2935N		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Manish Agarwal (CA)
राजस्व की ओर से / Revenue by : Shri Anup Singh (JCIT)

सुनवाई की तारीख / Date of Hearing : 10/04/2019
उदघोषणा की तारीख / Date of Pronouncement : 12/04/2019

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A)-3, Jaipur dated 09.07.2018 for Assessment Year 2011-12.

2. At the outset, the Id. AR submitted that the matter has been decided ex-party *qua* the assessee by the Id. CIT(A). It was submitted that the notice issued for hearing by the Id. CIT(A) were sent to the factory address of the assessee whereas the assessee while filing the appeal in Form No. 35 has given address of its authorized representative. Given that the notices were not sent to the address of the assessee so specified, notices received by some factory employee of

the assessee could not be communicated to the Id. AR and hence the Id. AR could not appear before the Id. CIT(A) on the scheduled date of hearing. It was accordingly submitted that in the interest of justice, the assessee may be provided an opportunity to appear before the Id. CIT(A) to submit its case. On merits, it was submitted that the matter is squarely covered in favour of the assessee wherein the disallowance of commission payment was deleted by the Co-ordinate Bench in earlier year in favour of the assessee.

3. Per contra, Id. DR submitted that the Id. CIT(A) has given more than adequate opportunity to the assessee to represent its case and given the failure on the part of the assessee and/or Id. AR, the Id. CIT(A) was constrained to pass the order *ex-parte qua* the assessee.

4. Heard both the parties and perused the material available on record. It is noted that the Id. CIT(A) has issued notice for hearing on couple of occasions and on one of the occasions, the assessee/AR has attended to the appellate proceedings and matter was adjourned. However, there have been subsequent non-appearance on the next scheduled date of the hearing and non-compliance on part of the assessee/AR. Even subsequently, the Id. CIT(A) has issued notices scheduling the hearing on number of occasions. However, there have been non-appearance on the part of the assessee/AR. At the same time given that the issue is covered by the earlier decision of the Co-ordinate Bench has so contended by the Id. AR and given that the matter has not been decided on merits, we believe that the assessee deserves one more opportunity to represent its case before Id. CIT(A). Hence, in the interest of justice and fair play, we set aside the matter to

the file of Id. CIT(A) subject to cost of Rs. 2000/-. Needless to say, the assessee/AR shall appear before the Id. CIT(A) and provide the necessary information/documentation and cooperate in timely completion of the appellate proceedings.

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

Order pronounced in the open Court on 12/04/2019.

Sd/-

(विजय पाल राव)
(Vijay Pal Rao)

न्यायिक सदस्य / Judicial Member

Sd/-

(विक्रम सिंह यादव)
(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 12/04/2019.

*Ganesh Kr

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

1. अपीलार्थी / The Appellant- M/s Ashoka Industries, Jaipur
2. प्रत्यर्थी / The Respondent- DCIT, Circle-7, Jaipur
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 975/JP/2018 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar