

**IN THE INCOME TAX APPELLATE TRIBUNAL
JODHPUR BENCH (SMC), JODHPUR**

BEFORE SHRI N.K. SAINI, VICE PRESIDENT

ITA No. 491/Jodh/2018
(ASSESSMENT YEAR-2015-16)

Mitil Birla, Birla Complex, Naya Bazar, Shahpura, Bhilwara	Vs	The ACIT, Circle Bhilwara, Bhilwara
(Appellant)		(Respondent)
PAN: AJOPB2698G		

Revenue By	Sh. P.K. Singi, DR
Assessee By	Shri Amit Kumar, CA
Date of hearing	03.05.2019
Date of Pronouncement	06.05.2019

ORDER

This is an appeal by the assessee against the order dated 08.08.2018 of Ld. Commissioner of Income Tax (Appeals), Ajmer.

2. The main grievance of the assessee vide ground No.1 relates to the non-granting of opportunity of being heard in violation of the principles of natural justice.

3. Facts of the case in brief are that the assessee filed the return of income on 31.8.2015 declaring an income of Rs. 46,68,030/-. Later on, the

case was selected for scrutiny. The assessee also claimed relief u/s 90 of the Income Tax Act, 1961 (in short 'the Act'). The Assessing Officer did not allow the claim of the assessee by observing that the documents for the payment of the tax in Belgium for which relief u/s 90 of the Act had been claimed, were not furnished.

4. Being aggrieved, the assessee carried the matter to the Ld. CIT(A) who dismissed the appeal by passing an ex-parte order and observed that the assessee had filed the additional evidences but no application for admission of the same was furnished.

5. Now the assessee is in appeal.

6. The Ld. counsel for the assessee submitted that the Ld. CIT(A) passed the impugned order ex-parte without giving any opportunity of being heard. It was also submitted that the assessee furnished the requisite documents before the Assessing Officer but these were not considered for the reasons best known to him. He drew my attention towards page Nos. 9 & 10 which is a copy of the email sent to the Assessing Officer on 11.12.2017 and stated that the assessee sought time but the Assessing Officer had not allowed the time and that the similar documents were furnished to the Ld. CIT(A) who had not admitted the same by stating that no application was furnished for admission of the documents. The Ld. counsel for the assessee requested to set aside this case to the file of the Assessing Officer .

7. In his rival submissions, the Ld. Sr. DR although supported the orders of the authorities below but could not controvert the contention of the Ld. counsel for the assessee.

8. I have considered the submissions of both the parties. In the present case, it appears that the Ld. CIT(A) considered the documents as additional evidence which were already filed by the assessee before the Assessing Officer, and did not admit the same. It also appears that the Assessing Officer declined the claim of the assessee u/s 90 of the Act for the reason that the evidences were not produced before him for payment of taxes in Belgium. On the contrary, the claim of the Ld. counsel for the assessee is that the said documents were furnished which were not considered by the Assessing Officer.

9. I, therefore, considering the totality of facts, deem it appropriate to set aside this case back to the file of the Assessing Officer to be adjudicated afresh in accordance with law after providing due and reasonable opportunity of being heard to the assessee.

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

(Order Pronounced in the Court on 06.05.2019)

Sd/-
(N.K. SAINI)
Vice President

Dated : 06.05.2019
"आर.के."

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त/ CIT
4. आयकरआयुक्त (अपील)/ The CIT(A)
5. विभागीयप्रतिनिधि, आयकरअपीलीयआधिकरण, चण्डीगढ़/ DR, ITAT, Jodhpur
6. गार्डफाईल/ Guard File

आदेशानुसार/ By order

सहायकपंजीकार/ Assistant Registrar