

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'F' NEW DELHI**

**BEFORE SHRI H. S. SIDHU, JUDICIAL MEMBER
AND
SHRI B.R.R. KUMAR, ACCOUNTANT MEMBER**

ITA No. 4587/Del/2016

(A.Y. 2006-07)

AND

ITA NOS. 592 & 593/DEL/2017

(A.Y. 2006-07)

RAJASTHAN CEREALS PVT. LTD. vs. ACIT, CIRCLE 15(1),
SP-01, RAJDHANI MANDI YARD, NEW DELHI
KUKAR KHERA,
KRISHI UPAJ MANDI SAMITI,
OP. VKI AREA, SIKAR ROAD,
OPP. SHOP NO. E-1
JAIPUR
(PAN: AACCS2980C)
(ASSEESSEE)

(RESPONDENT)

Assessee by: Sh. Mayank Patawari, ACA

Revenue by: Sh. Surender Pal, Sr. DR.

ORDER

PER H.S. SIDHU, JM

These appeals are filed by assessee against the respective Orders passed by the Ld. CIT(A)-7, New Delhi relating to Assessment Year 2006-07. Since these appeals are inter-connected, being quantum appeal and its penalty appeals, hence, the same were heard together and are being disposed of by this common order for the sake of convenience, by first dealing with Quantum Appeal i.e. ITA No.

4587/Del/2016 (AY 2006-07). However, the grounds of all the 03 appeals are reproduced hereunder:-

2. The grounds raised in Quantum Appeal being ITA No. 4587/Del/2016 (AY 2006-07) read as under:-

- “1. *That the order of the Ld. CIT(A) is bad in law and is against the facts and circumstances of the case.*
2. *That the Ld. CIT(A) has erred in dismissing the appeal on the ground that the same is not maintainable.*
3. *That the Ld. CIT(A) has grossly erred in not quashing the assessment for being without jurisdiction as the initial notice u/s. 143(2) was never served upon the appellant.*
4. *That the Ld. CIT(A) has erred in not quashing the impugned assessment framed u/s. 144 as the procedure laid down for framing assessment u/s. 144 had not been followed by the AO.*
5. *That having regards to the facts of the case the Ld. CIT(A) has erred in not deleting the addition made by disallowing the entire expenditure claimed in the P&L account.*
6. *That having regards to the facts of the case the Ld. CIT(A) has erred in not deleting the addition of Rs. 35,00,000/- made u/s. 69 of the Act.*
7. *That above grounds are independent of one another and the appellant craves the leave to add, modify,*

amend or delete any of the grounds of the appeal at the time of hearing.

Prayer:-

In view of the facts and circumstances of the case, the appellant prays that the order of the Ld. CIT(A) dismissing the appeal may kindly be set aside and the penalty imposed be deleted or any other relief, which this Hon'ble Court deems fit and proper, be given."

3. The grounds raised in Penalty Appeal being ITA No. 592/Del/2017 (AY 2006-07) read as under:-

- "1. That the order of the Ld. CIT(A) is bad in law and is against the facts and circumstances of the case.*
- 2. That the Ld. CIT(A) has erred in dismissing the appeal on the ground that the same is not maintainable.*
- 3. That the Ld. CIT(A) has grossly erred in not deleting the penalty of Rs. 20,000/- as the same was imposed without serving any notice upon the assessee.*
- 4. That the grounds are independent of one another and the appellant craves the leave to add, modify, amend or delete any of the grounds of the appeal at the time of hearing.*

Prayer:-

In view of the facts and circumstances of the case, the appellant prays that the order of the Ld. CIT(A) dismissing the appeal may kindly be set aside and the

penalty imposed be deleted or any other relief, which this Hon'ble Court deems fit and proper, be given.

4. The grounds raised in another Penalty Appeal being ITA No. 593/Del/2016 (AY 2006-07) read as under:-

- “1. That the order of the Ld. CIT(A) is bad in law and is against the facts and circumstances of the case.*
- 2. That the Ld. CIT(A) has erred in dismissing the appeal on the ground that the same is not maintainable.*
- 3. That the Ld. CIT(A) has grossly erred in not deleting the penalty of Rs. 27,83,160/-- as the same was imposed without serving any notice upon the assessee.*
- 4. That the grounds are independent of one another and the appellant craves the leave to add, modify, amend or delete any of the grounds of the appeal at the time of hearing.*

Prayer:-

In view of the facts and circumstances of the case, the appellant prays that the order of the Ld. CIT(A) dismissing the appeal may kindly be set aside and the penalty imposed be deleted or any other relief, which this Hon'ble Court deems fit and proper, be given.

5. Facts narrated by the revenue authorities are not disputed by both the parties, hence, the same are not repeated here for the sake of brevity.

6. During the hearing, Ld. Counsel for the assessee has stated that Ld. CIT(A) has erred in not quashing the assessment for being without jurisdiction as the initial notice u/s. 143(2) of the Act was never served upon the assessee. He further submitted that Ld. CIT(A) has erred in not quashing the assessment framed u/s. 144 of the Income Tax Act, 1961 (in short "Act") as the procedure laid down for framing assessment u/s. 144 of the Act had not been followed by the AO and proper opportunity of hearing was not provided to the assessee. He further submitted that Ld. CIT(A) has dismissed the appeal of the assessee being not maintainable on account of delay in filing the appeal. He further stated that assessee has filed all the necessary documents/ evidences before the lower authorities, but the same were not considered by them. Hence, he requested to remit back the issues to the file of the AO for fresh consideration in the quantum appeal.

7. Ld. DR relied upon the orders of the authorities below and opposed the request of the Ld. Counsel for the assessee.

8. We have heard both the parties and perused the records. We find that AO has passed the exparte order dated 31.10.2018 without giving proper opportunity to the assessee to substantiate its case. It is

further noted that Ld. CIT(A) has dismissed the appeal of the assessee being not maintainable on account of delay in filing the appeal. We further note that assessee has filed a Paper Book containing pages 1-87 in which he has attached the copy of acknowledgement of Income Tax Return for the year; copy of computation of income for the year; copy of audited accounts of the assessee company for year; copy of statement of Birla Mutual Fund; copy of bank statement of IDBI Bank for the relevant period reflecting the entry of investment in Mutual Fund and Source of Investment; copy of reply dated 24.6.2016 stating the reasons to condone the delay in appeal filing; copy rejoinder dated 21.12.2015 to remand report 4.11.2015; copy of remand report dated 4.11.2015, received by CIT(A); copy of assessment order enclosed with speed post list as Annexure-1; copy of rejoinder dated 8.10.2015 to remand report dated 13.7.2015; copy of submission dated 25.9.2014 before the CIT(A); copy of letter dated 7.4.2014 requesting for certified copies of all notices and orders; copy of letter dated 4.3.2011 for transfer of income tax records; copy of notice under section 143(2) dated 7.1.2008; copy of letter dated 26.5.2008 requesting for changing of bank account number and also change in correspondence address; copy of reply to notice under section 142(1) dated 16.2.2008 along with this balance sheet, profit and loss account including all schedules and annexures, audit report in Form 3CD and computation as per Income Tax Act and copy of notice under section 142(1) dated

8.2.2008 served to Director of the assessee company, which were not discussed/considered by the lower authorities, while adjudicating the issues. In view of facts and circumstances as explained above and in the interest of justice and keeping in view the exparte order passed by the AO u./s 144 of the Act as well as non-consideration of sufficient reasons for not condoning the delay by the Ld. CIT(A) in filing the appeal before him, we are of the considered view that the delay deserve to be condoned and the issues in dispute need to be re-adjudicated by the AO, after considering all the evidences/documents filed by the Assessee and assessee be given adequate opportunity of being heard. Accordingly, we remit back the issues in dispute to the file of the AO for *do novo* consideration, after giving adequate opportunity of being heard to the assessee and also consider all the documents/evidences filed by the assessee and then pass a speaking order. Assessee is at liberty to file any other document/ evidence before the AO to substantiate its case. However, the assessee is directed to fully cooperate with the Assessing Officer in the proceedings and did not take any unnecessary adjournment in the proceedings. In the result, the quantum appeal of the assessee is allowed for statistical purposes.

9. As regards penalty appeals i.e. ITA No. 592/Del/2017 (AY 2006-07) and ITA no. 593/Del/2017 (AY 2007-08) grounds of which are reproduced in para no. 3 & 4 of this order, are concerned, since we have remitted back the issues in dispute to the file of the AO for *do novo* consideration in respect of quantum appeal being ITA No. 4587/Del/2016 (AY 2006-07), as aforesaid, therefore, the penalties in question involved in ITA No. 592/Del/2017 (AY 2006-07) and ITA no. 593/Del/2017 (AY 2007-08) are also set aside to the file of the AO

with the similar directions, as given above in Quantum appeal vide para no. 8 of this order. Accordingly, both the ITA No. 592/Del/2017 (AY 2006-07) and ITA no. 593/Del/2017 (AY 2007-08) are also allowed for statistical purposes.

10. In the result, all the 03 Appeals filed by the assessee stands allowed for statistical purposes.

Order pronounced on 06/06/2019.

Sd/-
[B.R.R. KUMAR]
ACCOUNTANT MEMBER

Sd/-
[H.S. SIDHU]
JUDICIAL MEMBER

Date 06/06/2019

“SRBHATNAGAR”

Copy forwarded to: -

1. Appellant -
 2. Respondent -
 3. CIT
 4. CIT (A)
 5. DR, ITAT
- TRUE COPY

By Order,

Assistant Registrar, ITAT, Delhi Benches