

आयकर अपीलिय अधीकरण, खंडपीठ गुवाहाटी ,
*IN THE INCOME TAX APPELLATE TRIBUNAL
GUWAHATI BENCH, GUWAHATI*

Before **Shri S.S.Godara, Judicial Member** and
Dr. A.L. Saini, Accountant Member

ITA No.154/Gau/2016
Assessment Year :2012-13

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| Vijay Vyas 6 th Floor, Asam Ispat Complex, N.S. Road, Fatashil Ambari, Guwahati- 781009 [PAN No.ABEPV 5739 Q] | V/s. | DCIT, Circle-3, 7 th Floor, Aayakar Bhawan, G.S. Road, Christian Basti, Guwahati-781005 |
| अपीलार्थी /Appellant | .. | प्रत्यर्थी/Respondent |

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| अपीलार्थी की ओर से/By Appellant | None |
| प्रत्यर्थी की ओर से/By Respondent | Shri M. Haokip, JCIT-DR |
| सुनवाई की तारीख/Date of Hearing | 02-07-2019 |
| घोषणा की तारीख/Date of Pronouncement | 10-07-2019 |

आदेश /ORDER

PER BENCH:-

This assessee's appeal for assessment year 2012-13 arises against the Commissioner of Income Tax (Appeals)-2 Guwahati's order dated 24.08.2016 passed in case No.Guwa-232/2015-16, involving proceedings u/s 153A r.w.s 144 of the Income Tax Act, 1961; in short 'the Act'.

Case called twice. None appears at the assessee's behest. We therefore proceed ex parte against the assessee. The instant appeal is taken up for adjudication on merits.

2. The assessee's sole substantive grievance relating to expenditure seeks to reverse both the lower authorities' action adding an amount of Rs.16,47,199/- on account of alleged undisclosed investment made in Shri Salasar Industries. The CIT(A)'s detailed discussion confirmed the impugned addition reads as under:-

"3. Ground No.1, 7 and 8:

These grounds are general in nature. The appellant has not made any submissions on these grounds during the course of hearing. Hence, these are not being adjudicated separately.

4. Ground No. 2 and 3:

These grounds are not pressed. Hence dismissed.

5. Ground No.4:

This ground pertains to disallowance of deduction of Rs.1,00,000/- u/s. 80C of the Income Tax Act, 1961 for want of documentary evidence.

5.1 In course of hearing the appellant has submitted before me the evidence in support of payment of LIP with a prayer for admission of these documents as additional evidence under Rule 46A of the Income Tax Rules, 1962. In his remand report the Assessing Officer has stated that he has no objection of the admission of fresh or additional evidence in the same was considered to be relevant for disposal of the issue.

5.2 I have considered the submissions made before me as well as the remand report sent by the Assessing Officer. In view of the facts stated by the appellant, I admit the additional evidence now produced before me and after considering the additional evidence, I allow the claim of the appellant. This ground of appeal is, therefore, allowed.

6. Ground No.5:

This ground pertains to disallowance of deduction of Rs.15,000/- u/s 80D of the Income Tax Act, 1961 for want of documentary evidence.

6.1 In course of hearing, the appellant has submitted before me the evidence in support of payment of premium for mediclaim insurance with a prayer for admission of these documents as additional evidence under Rule 46A of the Income Tax Rules, 1962. In this remand report the Assessing Officer has not offered any comment on this issue.

6.2 I have considered the submissions made before me as well as the remand report sent by the Assessing Officer. The Assessing Officer has not offered any comment on this issue. In view of the facts stated by the appellant, I admit the additional evidence now produced before me and after considering additional evidence, I allow the claim of the appellant. This ground of appeal is, therefore, allowed.

7. Ground No.6:

This ground pertains to the addition of Rs.1,64,87,199/- in the total income of the appellant as un-disclosed investment with Shri Salasar Industries. The Assessing Officer found that in course of search & seizure operation in the case of M/s SMS Smelters Ltd. on 07.12.2012 the boa marked as "HD-4" (Hard Drive) was seized. This seized material contained tally account named as "SSI". The aforesaid seized material revealed credit balance of Rs.1,72,75,21\51/-0 in the same of the appellant as on 31.03.20012. The Assessing Officer further found that in the personal balance sheet of the appellant as on 31.03.2012, an amount of Rs.7,88,052/- was shown under the head investment in Shri Salasar Industries (SSI). Since no explanation was furnished by the appellant, the Assessing Officer treated the difference of Rs.1,64,87,199/- (Rs.1,72,75,251/- - Rs.7,88,052/-) as un-disclosed investment of the appellant and added the same in his total income.

7.1 Before me the appellant vide his written submission dated 02.02.2016 has contended as follows:

'5. Ground No.6: (Addition on account of alleged undisclosed investment Rs.1,64,87,199/-)

- (i) While making the assessment, the Assessing Officer has added Rs.1,64,87,199/- in the total income of the appellant on account of alleged undisclosed investment.
- (ii) The relevant facts are that in the course of search & seizure operations conducted at the office cum factory premises of M/s SMS Smelters Ltd. at Lekhi Villages, Naharlagun, Arunachal Pradesh books of accounts marked as "HD-4" (hard drive) was seized vide Annexure "A" to the panchanama dated 07.12.2012 prepared at their place. The aforesaid seized material marked as "HD-4" contained a tally account named "SSI" containing balance sheet and profit & loss account for the FY 2011-12. In the aforesaid seized material an amount of Rs.1,72,75,251/- appeared as credit balance in the name of the appellant as on 31st March 2012.
- (iii) The Assessing Officer found that in the personal balance sheet of the appellant as on 31.03.2012, an amount of Rs.7,88,0523/- as shown under the head investment in Shri Salasar Industries. He, therefore, in the absence of any explanation from the appellant treated this balance amount of Rs.1,64,87,199/- as undisclosed investment of the appellant.
- (iv) It is respectfully submitted that the aforesaid seized material which was seized from M/s SMS Smelters Ltd., appears to be combined account of various groups. There is no corroborative evidence that the appellant made the above investment. In view of the above, the Assessing Officer was not justified in making the aforesaid addition.'

7.2 I have considered the submissions made by the appellant. I have also perused the assessment order as well as the remand report sent by the Assessing Officer. The appellant apart from making a general submission that the aforesaid seized material "HD-4" appears to be a combined account of various groups and there is no corroborative evidence to the effect and that the appellant made the investment as shown in the "HD-4", has not made any specific submissions to contradict the finding of the Assessing Officer. The appellant is a partner in Shri Salasar Industries wherein the amount of Rs.1,72,75,251/- is shown credited in the "HD-4". Therefore, there is every reason to believe that the difference of Rs.1,64,87,199/-, as mentioned above, was the appellant's un-disclosed investment in Shri Salasar Industries. Since no specific explanation came from the appellant even during the course of appellate proceedings, I confirm the addition made by the Assessing Officer. This ground of appeal, is therefore, dismissed."

3. It is therefore clear from a perusal of the lower appellate findings that assessee has failed to explain source of impugned investments made in Shri Salasar Industries. We notice that the CIT(A) had also called for remand report from the Assessing Officer in this regard at assessee's behest wherein he further fail to explain source in corresponding proceedings. We therefore

find no reason to interfere with the CIT(A)'s detailed findings affirming the impugned expenditure.

4. This assessee's appeal is dismissed.

Order pronounced in the open court 10/07/2019

Sd/-
(लेखा सदस्य)
(A.L.Saini)
(Accountant Member)
Guwahati,
*Dkp

Sd/-
(न्यायिक सदस्य)
(S.S.Godara)
(Judicial Member)

दिनांक:- 10/07/2019 गूवाहाठी ।

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. आवेदक/Assessee-Shri Ratan Sharma, 6th Floor, Fatasil Ambari, Guwahati-9
2. राजस्व/Revenue-DCIT, Circle-3, R.No.714, 7th Floor, Aayakar Bhawan, G.S. Road Guwahati-781005
3. संबंधित आयकर आयुक्त गूवाहाठी / Concerned CIT Guwahati
4. आयकर आयुक्त- अपील / CIT (A) Guwahati
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, गूवाहाठी खंडपीठ / DR, ITAT, Guwahati
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

Sr. Private Secretary (on tour)
आयकर अपीलीय अधिकरण,
गूवाहाठी ।