

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B", NEW DELHI**

**BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SH. PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

**ITA No.5215/Del/2016
Assessment Year : 2009-10**

M/s. Ester Industries Limited, Block-A, Plot No.11, Infocity-I, Sector-33 & 34, Gurgaon-122001. PAN : AAACE0119E	Vs.	ACIT, Circle-8(2), New Delhi.
(Appellant)		(Respondent)
Appellant by		Sh. Prem Sharma, AR
Respondent by		Ms. Nidhi Srivastava, CIT DR
Date of hearing		05.08.2019
Date of pronouncement		21.08.2019

ORDER

PER S.KAMBLE, J.M:

This appeal by the assessee is directed against the order dated 08.09.2016 passed by the CIT(A)-37, New Delhi in relation to assessment year 2009-10 on the following grounds:-

(a) "On the facts and in the circumstances of the case, the CIT(A) has erred, both on facts and in law, in passing the impugned exparte order dated 9.9.2016 dismissing the appeal as not maintainable and he should have allowed the appellant adequate and reasonable opportunity to remove the defect. In the appeal memo which is curable and should have thereafter heard and decided the appeal on merits on all the grounds and issues raised before him and failure to do so, has vitiated the impugned order.

(b) On the facts and in the circumstances of the case, the CIT(A) has erred, in not calling for the records relating to original assessment and re-assessment of the appellant from the AO and has failed to consider fairly and objectively

each one of the grounds pleaded by the appellant although they are mentioned in para 2 of the order but none of them had been dealt with or decided arid in view of the impugned order being exparte and there was valid and reasonable cause for the appellant seeking time on 9.9.2016, the denial of effective opportunity to the appellant and refusal to consider the appeal for decision on merits have led to grave injustice to the appellant for which the impugned order be vacated.

(c) The records having been received only on 8.8.2016, the hearing notice dated 24.8.2016 sent to the wrong/old address of the appellant instead of the address given on the appeal memo had led to the delay in receipt of notice and attending the proceedings for which the appeal ought not to have been dismissed.

(d) The appellant had acted bona fide and the curable defect in the appeal memo has been cured by filing the revised appeal memo along with application for recall of exparte order dated 9.9.2016 filed before CIT(A) and in view of the same, it is prayed that this Hon'ble Tribunal may be pleased to set aside the impugned exparte order passed by the CIT(A) and direct the appeal to be decided by him correctly in accordance with law and on merits in respect of all the grounds raised by the appellant after granting effective opportunity of personal hearing to the appellant and, after getting the complete records of the Assessing Officer relating to original assessment as well as re-assessment as even the re-assessment order was exparte made perversely by the A O.”

2. M/s. Ester Industries Ltd. is a Public Limited Company incorporated under the Companies Act, 1956, which was regularly assessed to Income-tax. For the assessment year 2009-10, regular assessment u/s. 143(3) was made by the Assessing Officer vide order dated 18.11.2011 by which the book profits of the assessee were enhanced from Rs.50,36,29,047/- declared by the assessee to Rs.51,24,47,405/-.

3. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A).The CIT(A) passed an ex-parte order thereby partly allowing the appeal of the assessee.

4. The Ld. AR submitted that the CIT(A) has not granted adequate and reasonable opportunity to remove the defects in the appeal memo which is curable. The Ld.AR further submitted that the hearing notice dated 24.08.2016 was also sent to the wrong/old address of the assessee instead of address given in the appeal memo, which led to delay in receipt of notice and attending the proceedings for which the appeal ought not to have been dismissed. Therefore, the ld. AR submitted that the matter may be remanded back to the file of the CIT(A) for deciding the appeal on merits by giving proper opportunity as per principles of natural justice.

5. The Ld. DR relied upon the assessment order and the order of the CIT(A). The Ld. DR further submitted that proper opportunity was granted by the CIT(A) to remove the defect, which was not availed by the assessee at the relevant time.

6. We have heard both the parties and perused all the relevant material available on record. The CIT(A) has dismissed the appeal of the assessee on the ground that the defect was not removed in the memorandum of appeal. From the records, it can be seen that the notice was also not properly served to the assessee at the address mentioned in Form-35. Therefore, in the interest of justice, it will be appropriate to remand back this matter to the file of the CIT(A) and the matter may be decided on merit. Needless to say that the assessee will remove the defect in appeal, i.e., rectify Form 35 before the CIT(A) within a period of 30 days from the receipt of this order. The assessee be given opportunity of hearing by following the principles of natural

justice. Accordingly, the appeal of the assessee is partly allowed for statistical purposes.

7. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 21st day of August, 2019.

**Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 21.08.2019
** Amit Kumar**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI