

IN THE INCOME TAX APPELLATE TRIBUNAL

“A” BENCH : BANGALORE

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER AND
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 979/Bang/2019
Assessment Year : 2008-09

M/s. Arihant Metals & Extruded Pvt. Ltd., Plot No. 9-L, Yarandahally, Bommasandra I Phase, Industrial Area, Jigani hobli, Anekal Taluk, Bangalore – 562 158. PAN: AAACD9187E	Vs.	The Assistant Commissioner of Income Tax, Circle – 1 (1), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri S.V. Ravishankar, Advocate
Revenue by	:	Shri Ujjwal Kumar, JCIT (DR)

Date of hearing	:	06.08.2019
Date of Pronouncement	:	13.09.2019

ORDER

Per Shri A.K. Garodia, Accountant Member

This appeal is filed by the assessee and the same is directed against the order of Id. CIT(A)-1, Bangalore dated 02.01.2018 for Assessment Year 2008-09.

2. The grounds raised by the assessee are as under.

“1. The order of the learned Commissioner of Income-tax (Appeals) - 1 passed under section 250 of the Income Tax Act for AY2008-09 in so far as it is against the Appellant is opposed to law, weight of evidence, natural justice, probabilities, facts and circumstances of the Appellant's case.

2. The appellant denies itself liable to be assessed to total income of Rs.84,33,570/- as against returned income Rs.19,33,570/- on the facts and circumstances of the case.

3. The learned CIT(A) was not justified in not affording sufficient opportunity of hearing and consequently passed the order in violation of principles of natural justice on the facts and circumstances of the

case.

4. *The learned CIT(A) was not justified in appreciating that the appellant has a manufacturing premises, which finds a mention in the assessment order passed and alternatively the notices of hearing ought to have been sent to the said address, which has resulted in the order being passed, in violation of the principles of natural justice, on the facts and circumstances of the case.*

5. *The learned CIT(A) was not justified in appreciating that the appellant has filed all the required details to prove the bonafides of the investors, which also finds a mention in the order of assessment and thereby the additions of Rs.65,00,000/- made in the order passed were required to be deleted in full.*

6. *The appellant denies the liability to pay interest under section 234B and 234C of the Act, in view of the fact that there is no liability to additional tax as determined by the assessing officer. Without prejudice, the rate, period and on what quantum the interest has been levied are not in accordance with the law and are not discernible from the order and hence deserves to be cancelled on the facts and circumstance the case.*

7. *The appellant craves leave of this Hon'ble Tribunal, to add, alter, delete, amend or substitute any or all of the above grounds of appeal as may be necessary at the time of hearing.*

8. *For these and other grounds that may be urged at the time of hearing of appeal, the appellant prays that the appeal may be allowed for the advancement of substantial cause of justice and equity.”*

3. Additional grounds are also raised by assessee which are as under.

“Legal Grounds

1. *Grounds on re-opening*

a. *The learned CIT(A) was not justified in appreciating that the notice issued under section 148 of the Act, was bad in law.*

b. *The learned CIT(A) has not appreciated the fact that the order of assessment is bad in law and void-ab-initio for want of requisite jurisdiction especially, the mandatory requirements to assume jurisdiction under section 148 of the Act did not exist and have not been complied with and consequently the entire assessment is bad and unsustainable in law and thus the assessments requires to be cancelled on the facts and circumstance of the case.*

c. *The learned Commissioner of Income-tax [Appeals] was not justified in law in appreciating that the appellant has disclosed fully and truly all material facts necessary for the assessment, on the facts and circumstances of the case.*

2. *Grounds on reason to believe*

a. *The learned CIT(A) was not justified in appreciating that reopening the case of the appellant merely on information received, but sweeping generalisation and in the absence of any cogent material to pinpoint that the appellant has indulged in any bogus transaction amounts to only reason to suspect and not reason to believe on the facts and circumstances of the case.*

b. *The learned CIT(A) has not appreciated the fact that the learned assessing officer was not justified in reopening the case of the appellant u/s 147 of the act since there was no new material which has come to the hands of the learned assessing officer, to form an opinion that income had escaped assessment to issue a notice under section 148 of the Act. .*

3. *Grounds on sanction*

a. *The learned Commissioner of Income-tax [Appeals] has not appreciated the fact that the order of assessment is void ab initio as proper sanction has not been obtained as contemplated under section 151(1) of the Act and hence the entire proceedings are without jurisdiction and liable to be quashed.*

4. *Grounds on assessment u/s 153C*

The learned Commissioner of Income-tax [Appeals] was not justified in law in appreciating that the assessing officer ought to have passed the order of assessment u/s 153C of the Act, since documents purported to the appellant have been found consequent to search u/s 132 of the Act, on the facts and circumstances of the case.

5. *Grounds on violation of principles of natural justice*

a. *The learned CIT(A) was not justified in appreciating that the sworn statements of Sri Praveen Kumar Jain, which were relied upon by the AO, was not provided to the appellant for making a rebuttal and thus the order passed was in violation of the principles of natural justice, on the facts and circumstances of the case.*

b. *The learned Commissioner of Income-tax [Appeals] was not justified in not setting aside the order as the cross examination of Sri Praveen Kumar Jain, ought to have been provided to the appellant for rebuttal, suo-moto by the AO, hence vitiating the assessment proceedings as the sole reason of reopening remained unverified on the facts and circumstances of the case.*

c. *The learned Commissioner of Income-tax [Appeals] has not appreciated the fact that the order is vitiated on account of violation of principles of natural justice in as much as the appellant was not afforded opportunity of cross-examination of the person relying on whose statement the case of the appellant was re-opened and the additions were sought to be made in the assessment, on the facts and*

circumstances of the case.

6. The appellant craves leave of this Hon'ble Tribunal, to add, alter, delete, amend or substitute any or all of the above grounds of appeal as may be necessary at the time of hearing.

7. For these and other grounds that may be urged at the time of hearing of appeal, the appellant prays that the appeal may be allowed for the advancement of substantial cause of justice and equity.”

4. In course of hearing, it was submitted by Id. AR of assessee that the impugned order passed by Id. CIT(A) is ex-parte qua the assessee. He submitted that it is noted by Id. CIT(A) in para 3 of his order that final notice was issued fixing the date of hearing on 11.12.2017 but the notice has come back unserved with the remarks of the postal authorities that the “Company left”. He submitted that the notice was sent to the address given in form no. 35 which was different than the address available on the assessment order and if the notice was not being served on the address given in form no. 35, efforts should have been made by Id. CIT(A) to serve the notice on the address of the assessee given in the assessment order. In any case, this is admitted position that notice was not served on the assessee and hence, in the interest of justice, the matter may be restored back to the file of Id. CIT(A) for fresh decision after providing reasonable opportunity of being heard to assessee. The Id. DR of revenue supported the order of Id. CIT(A).
5. We have considered the rival submissions. We find that the address given by the assessee in form no. 36 filed before the Tribunal is same as available in the body of the assessment order but the address available in the order of Id. CIT(A) and in form no. 35 is different. This is admitted position that notice issued by Id. CIT(A) regarding various dates of hearing were not served on the assessee although the assessee should have given proper address before Id. CIT(A) so that the notice could have been sent by Id. CIT(A) on correct address but still this is admitted position that the notices issued by Id. CIT(A) were not served on the assessee and hence, in the interest of justice, we feel it proper to set aside the order of Id. CIT(A) and restore the matter back to his file for fresh decision after providing reasonable opportunity of being heard to both sides and notice may be issued by Id. CIT(A) at the

address noted in the assessment order and in our order. If there is any change in the address of the assessee, the assessee should immediately intimate such change to Id. CIT(A). We order accordingly. In view of this, no adjudication on merit is called for at the present stage.

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

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-
(PAVAN KUMAR GADALE)
Judicial Member

Sd/-
(ARUN KUMAR GARODIA)
Accountant Member

Bangalore,
Dated, the 13th September, 2019.
/MS/

Copy to:

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|---------------|------------------------|
| 1. Appellant | 4. CIT(A) |
| 2. Respondent | 5. DR, ITAT, Bangalore |
| 3. CIT | 6. Guard file |

By order

Assistant Registrar,
Income Tax Appellate Tribunal,
Bangalore.