

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC' NEW DELHI**

BEFORE SHRI G.S. PANNU, VICE PRESIDENT

**ITA No.3804/Del/2019
Assessment Year : 2014-15**

Bombay Highway Carriers Pvt. Ltd. vs	Income Tax Officer,
C/o Rajeev Dinesh & Associates,	Ward-5(1),
D-32, Bali Nagar,	New Delhi.
New Delhi-110015	

(Appellant)

(Respondent)

Appellant by	:	Shri C.S. Anand, Advocate.
Respondent by	:	Ms. Ekta Vishnoi, Senior DR.

Date of hearing : **25.09.2019**

Date of pronouncement : **25.09.2019**

ORDER

This appeal by the assessee for the assessment year 2014-15 is directed against the order of learned CIT(A)-33, New Delhi dated 27th December, 2018.

2. In this appeal, the preliminary grievance of the assessee is that the CIT(A) has decided the matter ex parte without affording the assessee a reasonable opportunity of being heard. At the time of hearing, the learned representative for the assessee referred to para 3 of the order of the learned CIT(A) wherein it has been tabulated, inter alia, that the assessee had not

complied with the notice of hearing dated 10.12.2018 issued fixing the date of hearing on 26.12.2018.

3. In this context, it has been pointed out that subsequent to filing of appeal, there was a change in address, and when the first notice of hearing dated 25.4.2018 was issued at the old address, the assessee had responded vide letter dated 21.5.2018 in which the new address was reflected. However, the subsequent notice of hearing dated 10.12.2018 was issued by the CIT(A) at the old address stated in the Memorandum of Appeal and, therefore, the same could not reach the assessee; and, accordingly, there was no appearance before the Id. CIT(A) on 26.12.2018 i.e. the date of hearing. It was therefore contended that the matter be restored back to the CIT(A) so that the assessee is able to avail proper opportunity to present its case.

4. The aforesaid factual matrix has not been controverted by the Id. DR.

5. I have carefully considered the rival contentions and find that the assertions made by the assessee are duly supported by the relevant documents placed in the Paper Book filed at the time of hearing. In the present case, the substantive dispute revolves around the exemption claimed by the assessee u/s 80IA(4) of the Act with respect to the profits derived by it on providing on hire water tankers for supply of water to certain areas of Delhi. In the assessment order, the Assessing Officer has raised multiple grounds to deny the exemption u/s 80IA(4)(i) of the Act, including the fact that the activity undertaken by the

assessee does not involve any 'infrastructure facility' as contemplated u/s 80IA(4)(i)(b) of the Act. The CIT(A) has also affirmed the stand of the Assessing Officer primarily for the reasons assigned in the assessment order.

6. Be that as it may, I find that the Id. CIT(A) did not have the benefit of the arguments of the assessee inasmuch as none was present on behalf of the assessee before him. The reasons for non-appearance, which have been explained by the assessee, do not show any mala fides on the part of the assessee. In this view of the matter, I am inclined to set-aside the order of the Id. CIT(A) and restore the matter back to his file for a fresh adjudication in accordance with law. It is directed accordingly.

7. Accordingly, without going into the merits of the dispute, the appeal is restored back to the file of the CIT(A) who shall adjudicate the appeal de novo after allowing the assessee a reasonable opportunity of being heard as per law.

8. In the result, the appeal is allowed, as above.

The above decision was pronounced in the open court in the presence of both the parties on 25th September, 2019.

Sd/-

(G.S. PANNU)
VICE PRESIDENT

Dated: 25th SEPTEMBER, 2010
'GS'

Copy forwarded to: -

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

By Order

Assistant Registrar