

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "SMC", HYDERABAD**

BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER

I.T.A. No. 1342/HYD/2019

Assessment Year: 2011-12

RND Wafer Machines Private Limited, HYDERABAD [PAN: AACCR9653H]	Vs	Asst. Commissioner of Income Tax (OSD), Ward-3(2), HYDERABAD
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(Appellant)

(Respondent)

For Assessee : Shri Mohd.Afzal, AR
For Revenue : Smt. Matta Padma, DR

Date of Hearing : 04-11-2019
Date of Pronouncement : 11-11-2019

ORDER

This appeal filed by the assessee for the AY.2011-12 is directed against the order of the Commissioner of Income Tax (Appeals)-3, Hyderabad, dated 08-07-2019.

2. Brief facts of the case are that the Assessing Officer (AO) received an information that the assessee, during the financial year relevant to the AY.2011-12, has acquired an asset for Rs.20,12,035/-. He observed that the assessee has not filed any return of income for the AY.2011-12. Since he was of the opinion that the income chargeable to tax has escaped assessment, a notice u/s.148 of the Income Tax Act [Act] was issued to the assessee on 31-03-2018.

3. During the re-assessment proceedings, however, none appeared for the assessee and the AO completed the proceedings u/s.144 of the Act by bringing to tax the sum of Rs.20,12,035/- as 'un-explained investment' u/s.69A of the Act.

3.1. Aggrieved, the assessee preferred an appeal before the CIT(A), who confirmed the order of AO *ex-parte* the assessee by observing that the assessee has not filed any return of income and assessee is not exempt from operation of provisions of Section 249(4)(b) of the Act.

3.2. Aggrieved, the assessee is in second appeal before the Tribunal, by raising the following Grounds:

"1. The order of the learned Commissioner of Income Tax (Appeals) is against the law, weight of evidence and probabilities of case.

2. The learned Commissioner ought to have appreciated that there are no transactions for the subject assessment year, therefore, no return of income was filed by the assessee.

3. The learned Commissioner erred in dismissing the appeal assuming that the conditions laid down u/s.249(4) are violated, whereas, no income was accrued to the assessee as there were no transactions in the subject assessment year and no tax is payable.

4. The learned Commissioner ought to have appreciated that the purchase of car for Rs.20,12,035/- was made by the partnership firm namely, R and D Engineers (PAN AACFR2450D) and the same is reflected in the hands of R and D Engineers, therefore, erred in confirming the additions.

5. The learned Commissioner ought to have provided one more opportunity to the assessee for clarification of transaction which resulted in addition of Rs.20,12,035/- and also in respect of applicability of Section 249(4).

6. *The appellant craves leave to add to, amend or modify the above grounds of appeal either before or at the time of hearing of the appeal, if it is considered necessary”.*

4. The Ld.Counsel for the assessee submitted that the assessee is a company, whereas there is another partnership firm by name M/s.R and D Engineers, whose PAN was AACFR2450D. He submitted that the AO had erred in making the said addition of Rs.20,12,035/- u/s.69A of the Act in the hands of the assessee-company instead of examining it in the hands of the firm with similar name. Ld.Counsel also submitted that the AO as well as the CIT(A) have held that the asset has been purchased by the assessee herein. To counter the same, he has filed a copy of the tax invoice in support of his contentions that the property has been purchased by the firm and also that the asset has been shown in the books of the said firm and the depreciation has also been claimed therein. Finally, Ld.Counsel prayed for remanding the issue back to the file of AO for re-verification of these details.

5. Ld.DR was also heard.

6. After considering the submissions of the assessee and also material on record, I find that the said property has been purchased by M/s.R and D Engineers, a partnership firm whereas the assessee is a company. Since these documents were not filed either before the AO or before the CIT(A), they were constrained to pass *ex-parte* order and the CIT(A) also held that the assessee was liable to pay admitted tax u/s.249(4) of the Act. However, since the very acquisition of

the asset by the assessee is challenged, there cannot be any admitted tax payable by the assessee for admitting the appeal by the CIT(A). Therefore, I deem it fit and proper to remand the issue back to the file of AO for verification of these papers filed by the assessee to substantiate its claim that the property is not purchased by the assessee, but the same is purchased by the partnership firm, after giving the assessee a fair opportunity of hearing. Hence, the appeal filed by the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on 11th November, 2019

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Hyderabad, Dated: 11-11-2019

TNMM

Copy to :

1. RND Wafer Machines Private Limited, C/o. Mohd. Afzal, Advocate, #402, Sherson's Residency, 11-5-465, Criminal Court Road, Red Hills, Hyderabad.

2. Asst. Commissioner of Income Tax(OSD), Ward-3(2), Hyderabad.

3. CIT(Appeals)-3, Hyderabad.

4. Pr.CIT-3, Hyderabad.

5. D.R. ITAT, Hyderabad.

6. Guard File.