

IN THE INCOME TAX APPELLATE TRIBUNAL "C", BENCH KOLKATA

BEFORE SHRI J. SUDHAKAR REDDY, AM & SHRI S. S. GODARA, JM

आयकर अपीलसं./I.T.A No.746/Kol/2017

(निर्धारण वर्ष / Assessment Year: 2005-06)

M/s. Dien Commercials (P) Ltd. 22B, Cockler Lane, Kolkata – 700 029.	Vs.	DCIT, Circle 11, Kolkata
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AABCD 5770 C		
(Appellant)	..	(Respondent)

आयकर अपीलसं./I.T.A No.747/Kol/2017

(निर्धारण वर्ष / Assessment Year: 2007-08)

M/s. Dien Commercials (P) Ltd. 22B, Cockler Lane, Kolkata – 700 029.	Vs.	ITO, Wd – 11(4), Kolkata
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AABCD 5770 C		
(Appellant)	..	(Respondent)

Appellant by : Shri S.K. Tulsian, Advocate

Respondent by : Shri Supriyo Pal, JCIT, Sr. DR

सुनवाईकीतारीख/ Date of Hearing : 28/11/2019

घोषणाकीतारीख/Date of Pronouncement : 31/12/2019

आदेश / O R D E R

Per Shri S. S. Godara, JM

These two assessee's appeals for assessment year 2005-06 and 2007-08 arise against the Commissioner of Income Tax (A) - 9, Kolkata's ex-parte orders; both dated 29.02.2016, passed in case no.674/CIT(A)-9/Cir-11/2014-15/Kol and 648/CIT(A)-9/Wd-11(4)/2014-15/Kol; respectively, involving proceedings u/s 143(3) of the Income Tax Act, 1961 (in short 'the Act').

Heard both the parties. Case file perused.

2. Apart from various issues raised in these two appeals on merits, we notice at the outset that the CIT(A) ex-parte orders indicate that he had sought for a remand report from the Assessing Officer on 15.06.2015 in both assessment years. He holds in his orders under challenge that no such report had come from the Assessing Officer since he was stated to be a newcomer. He concludes that since there was above stated non-compliance during lower appellate proceedings and the assessee had also not pleaded any new facts or details for his consideration, the assessment finding making various disallowances / additions are liable to be upheld.

3. We have given our thoughtful consideration to rival contentions. Mr. Tulsian's sole argument during the course of hearing is that the Assessing Officer had admittedly sent his remand report to the CIT(A) on 30.04.2014 / 05.05.2014 followed by the assessee's rebuttal submissions forming part of records. The said remand report has been placed before the bench as well. All this sufficiently indicates that the CIT(A)'s findings under challenge (supra) holding no remand report from the Assessing Officer's side are against the record. Coupled with this, there is no lower appellate authorities' as contemplated u/s 250(6) of the Act as well as requiring framing of points of determination followed by a detailed adjudication on merits. Similar factual position emerges in AY 2007-08 as well. We therefore restore all the issues raised in these two appeals back to the Assessing Officer for fresh factual verification and adjudication as per law.

4. These two assessee's appeals are accepted for statistical purposes.

Order is pronounced in the open court on 31.12.2019.

Sd/-
(J. S. Reddy)
ACCOUNTANT MEMBER

Sd/-
(S. S. Godara)
JUDICIAL MEMBER

कोलकाता /Kolkata;

दिनांक/ Date: 31/12/2019

(Biswajit, Sr.PS)

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. The Appellant - M/s. Dien Commercials (P) Ltd.
2. The Respondent-
 - i. DCIT, Circle – 11, Kolkata.
 - ii. ITO, Wd-11(4), Kolkata.
3. आयकरआयुक्त(अपील) / The CIT(A), Kolkata [sent through email]
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, **कोलकाता**/ DR, ITAT, Kolkata [sent through email]
6. गार्डफाईल / Guard file.
सत्यापितप्रति

True Copy

By Order

Assistant Registrar,
I.T.A.T, Kolkata Benches,
Kolkata.