

आयकर अपीलीय अधिकरण, 'ए' / एस एम सी न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'A' SMC BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER

आयकर अपील सं./ITA No.2364/Chny/2017

निर्धारण वर्ष / Assessment Year : 2013-14

M/s R.K. Jewellers Pvt. Ltd.,
133, N.S.C. Bose Road,
Sowcarpet, Chennai - 600 079.

v. The Deputy Commissioner of
Income Tax,
Corporate Circle – 5(2),
Chennai - 600 034.

PAN : AAACR 1720 P

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri F.C. Jain, CA

प्रत्यर्थी की ओर से/Respondent by

: Shri AR.V. Sreenivasan, JCIT

सुनवाई की तारीख/Date of Hearing : 17.07.2019

घोषणा की तारीख/Date of Pronouncement : 03.09.2019

आदेश /ORDER

This appeal of the assessee is directed against the order of the Commissioner of Income Tax (Appeals) -3, Chennai, dated 30.06.2017 and pertains to assessment year 2013-14.

2. This appeal of the assessee was originally disposed of by an order dated 19.12.2017. On application by the assessee in M.P. No.197/Chny/2018, the order of the Tribunal dated 19.12.2017 was

recalled. Again, the appeal was disposed of by another order dated 07.08.2018. The assessee filed an MP for second time in M.P. No.197/Chny/2018. This Tribunal by an order dated 16.11.2018 again recalled the order and restored the appeal on file. Accordingly, it is posted for final disposal.

3. Shri F.C. Jain, the Ld. representative for the assessee, submitted that the assessee-company gave donation to M/s Herbicare Healthcare Bio Herbal Research Foundation, Kolkata. According to the Ld. representative, it appears there was a survey in the premises of M/s Herbicare Healthcare Bio Herbal Research Foundation, Kolkata. On the basis of material found during the course of survey operation, the Assessing Officer made addition by disallowing the claim of the assessee under Section 35(1)(ii) of the Income-tax Act, 1961 (in short 'the Act'). According to the Ld. representative, donation made by the assessee is not disputed. The entire transaction was made through banking channel, therefore, there is no question of any disallowance. According to the Ld. representative, the information gathered during the course of survey operation at Kolkata was not furnished to the assessee. therefore, the assessee is not in a position to offer its explanation.

4. On the contrary, Shri AR.V. Sreenivasan, the Ld. Departmental Representative, submitted that the investigation and enquiries conducted by the Investigation Wing of the Income-tax Department at Kolkata in the case of M/s Herbicare Healthcare Bio Herbal Research Foundation, disclose that they are not carrying out any research activity in the field of microbiology and analytical chemistry . According to the Ld. D.R., it was also found by the Investigation Wing that M/s Herbicare Healthcare Bio Herbal Research Foundation, Kolkata was providing only accommodation entries on commission basis. According to the Ld. D.R., investigation revealed that bogus donations were being taken by M/s Herbicare Healthcare Bio Herbal Research Foundation and after taking 12% to 18% commission, the balance amount was returned to the so-called donor. Therefore, according to the Ld. D.R., it is obvious that there was no donation given by the assessee. It is only accommodation entry or bogus transaction. Hence, according to the Ld. D.R., the CIT(Appeals) has rightly confirmed the disallowance. On a query from the Bench whether the report of Investigation Wing was duly furnished to the assessee or not? The Ld. D.R. submitted that he could not ascertain it immediately.

5. Having heard the Ld. representative for the assessee and the Ld. D.R., I have carefully gone through the material available on record. The main disallowance under Section 35(1)(ii) of the Act was made on the basis of the investigation and enquiries conducted at Kolkata. The Assessing Officer, on the basis of investigation conducted at Kolkata, found that the so-called transaction of donation was made on the basis of commission at the rate of 12% to 18%. There is no material available on record to suggest that the investigation details / report was furnished to the assessee. Therefore, the assessee claims before this Tribunal that it was not able to explain its case before the lower authorities properly. This Tribunal is of the considered opinion that when the Assessing Officer is placing his reliance on the investigation report / enquiries conducted at Kolkata, a copy of the same shall be furnished to the assessee so that the assessee would be in a position to explain what was actually transpired. Since no material available on record or no reference was made about furnishing copies in the orders of both the authorities below, this Tribunal is of the considered opinion that the matter needs to be re-examined by the Assessing Officer after furnishing the necessary material to the assessee. In other words, a copy of the investigation report / enquiries conducted at

Kolkata by the Investigation Wing of the Income-tax Department at Kolkata, has to be furnished to the assessee. Accordingly, the orders of both the authorities below are set aside and the entire issue is remitted back to the file of the Assessing Officer. The Assessing Officer shall re-examine the matter and furnish copies of Investigation report said to be received from the Investigation Wing at Kolkata and other materials that may have any relevance to the issue and thereafter decide the issue afresh in accordance with law, after giving a reasonable opportunity to the assessee.

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

Order pronounced in the court on 3rd September, 2019 at Chennai.

sd/-
(एन.आर.एस. गणेशन)
(N.R.S. Ganesan)
न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,
दिनांक/Dated, the 3rd September, 2019

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-3, Chennai
4. Principal CIT-5, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.