

THE INCOME TAX APPELLATE TRIBUNAL
"SMC" Bench, Mumbai
Before Shri Shamim Yahya (AM)

I.T.A. No. 6857/Mum/2018 (Assessment Year 2008-09)

Mr. Dilip K. Kapadia C/o. Keshavlal Vajechand Aban House, 1 st Floor 25/31, Ropewalk Street Off. K. Dubhash Marg Fort, Mumbai-400 023. PAN : AABPK0349K (Appellant)	Vs.	ITO-17(1)(4) 1 st Floor Aayakar Bhavan New Marine Lines M.K. Road Mumbai-400 020. (Respondent)
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Assessee by	Ms. Rutuja N. Pawar
Department by	Shri R. Bhoopathi
Date of Hearing	12.12.2019
Date of Pronouncement	17.02.2020

ORDER

This appeal by the assessee is directed against the order of learned CIT(A) dated 9.10.2018 pertains to A.Y. 2008-09.

2. Grounds of appeal read as under :-

1. That on the facts and in the circumstances of the case of the appellant and in law Id. CIT(A) has erred in accepting the order passed by Id. Assessing Officer without going into the contentions placed in the application for rectification u/s. 154 of the Act.
2. That on the facts and in the circumstances of the case of the appellant and in law Id. CIT(A) has erred in upholding the order o Id. Assessing officer without going in to the merits of the case.
3. That the impugned order being contrary to law, evidence and facts of the case may kindly be set aside, amended and modified in the light of the grounds of appeal enumerated above and the appellant be granted such relief as is called for on the facts and in the circumstances of the case of the appellant and in law.
4. That each of the grounds of appeal enumerated above is without prejudice to and independent of one another.

5. That the appellant craves leave to reserve to himself the right to add, to alter or amend any of the grounds of appeal before or at the end of the hearing and to produce such further evidence, documents and papers as may be necessary.
3. Brief facts of the case as noted by learned CIT(A), while deciding the assessee's appeal upon rejection of petition u/s. 154 are as under :-

The chronology of events leading to appeal is as under :-

Date	Event
25.3.2016	Assessment completed. 100% of value of accommodation entry disallowed alleging it to be bogus purchase.
6.4.2016	Application filed before the Assessing Officer seeking rectification and reduction of above addition.
25.5.2016	Assessing Officer rejects rectification application stating it to be out of purview of section 154.
16.6.2016	Appeal against order under section 154 filed.

To dispose appeal, 2 other things need to be considered. They are;

- A. No appeal is filed against regular assessment, and
 B. The Form 35 and grounds of appeal relate to order under section 154. The assessment order was attached to Form 35 as against order of rectification. This got cured when order under section 154 was filed on 04.10.2018.

Ground 1 states that rectification was rejected without assigning reason. I find that Assessing Officer has recorded that the appeal is out of purview of section 154. Hence I hold reasons are given. Hence the ground is dismissed.

Ground 2 (2, 2.1, 2.2 and 2.3) deals with merit of addition made under section u/s. 143(3) r.w. 147 dated 25.03.2016. The appeal before me is against order under section f 25.05.2016. Decision on matters covered by former cannot be adjudicated in appeal latter. Hence I decline to adjudicate. The ground is treated on dismissed.”

4. Against this order assessee is in appeal before the ITAT.
5. I have heard both the Counsel and perused the records. A reading of the above order of learned CIT(A) makes it clear that CIT(A) has dismissed the assessee's appeal by not going into the detail as to what was the issue and how the same was dealt with by the assessing officer. In this regard learned

departmental representative accepted that when the AO has mentioned that assessee is engaged in pharmaceutical business how can there be a disallowance for Diamond purchase in profit and loss account. The above shows that there is absence of application of mind. It is settled law that even Administrative orders have to be consistent with the rules of natural justice. Accordingly I remit the issue to the file of learned CIT appeals. Learned CIT appeals is directed to consider the issue afresh after giving the assessee proper opportunity of being heard.

6. In the result this appeal by the assessee stands allowed for statistical purposes

Order has been pronounced in the Court on 17.2.2020.

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 17/2/2020

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

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BY ORDER,
(Assistant Registrar)
ITAT, Mumbai