



IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI N.K. PRADHAN ACCOUNTANT MEMBER

ITA no.2140/Mum./2019
(Assessment Year : 2013-14)

Amity Thermosets Pvt. Ltd.
no.204/2015, Kharade Apartment
2nd Floor, Statin Road, Goregaon (E)
Mumbai 400 063 PAN – AABCA3840N

..... Appellant

v/s

Income Tax Officer
Ward-12(1)(2), Mumbai

..... Respondent

Assessee by : None
Revenue by : Shri Michael Jerald

Date of Hearing – 10.09.2020

Date of Order – 17.09.2020

ORDER

PER SAKTIJIT DEY. J.M.

The aforesaid appeal has been filed by the assessee challenging the order dated 13th March 2019, passed by the learned Commissioner of Income Tax (Appeals)-20, Mumbai, pertaining to the assessment year 2013-14.

2. When the appeal was called for hearing in virtual court, no one appeared on behalf of the respondent assessee to represent the case.

There is no application seeking adjournment either. Considering the nature of dispute, we proceed to dispose off the appeal ex-parte qua the assessee after hearing the learned Departmental Representative and on the basis of material available on record.

3. Brief facts are, the assessee, a resident company, is engaged in manufacture of phenol formaldehyde, moulding powder and phenol formaldehyde resin. For the assessment year under dispute, the assessee filed its return of income on 23rd September 2013, declaring total income of ₹ 39,01,321, after claiming deduction under section 10A of the Act. Assessment in case of the assessee was completed under section 143(3) of the Act determining the total income at ₹ 72,59,591, after disallowing claim of deduction under section 10A of the Act. Being aggrieved with the assessment order so passed, the assessee preferred an appeal before the first appellate authority.

4. The learned Commissioner (Appeals) while deciding the appeal ex parte dismissed it in limine alleging that the memorandum of appeal in Form no.35, has not been signed and verified either by the Managing Director or by any other director.

5. We have heard the learned Departmental Representative and perused the material on record. The basic grievance of the assessee, as expressed in the grounds raised, is against the ex-parte disposal of

the appeal in limine. Undisputedly, learned Commissioner (Appeals) has dismissed the appeal in limine due to a technical defect of non-signing of memorandum of appeal by the Managing Director or any other Director. On a careful scrutiny of the impugned order of learned Commissioner (Appeals), it is not forthcoming whether any opportunity of hearing was afforded to the assessee before dismissing the appeal ex-parte, that too, in limine. As could be seen from the grounds of appeal, it is the claim of the assessee that the memorandum of appeal in Form no.35, was verified and digitally signed by one of the Directors. From the copy of Form no.35 available on record, the aforesaid claim of the assessee appears to be correct. Even, accepting learned Commissioner (Appeals)'s version that the memorandum of appeal was not signed by the Managing Director or Director, it is a mere technical defect for which an opportunity was required to be given to the assessee to rectify the defect. Prima facie, it appears, no such opportunity was given to the assessee by learned Commissioner (Appeals). Therefore, in our considered opinion, the impugned order of the learned Commissioner (Appeals) is in gross violation of rules and natural justice, hence, deserves to be set aside. Accordingly, we do so. Consequently, the matter is restored back to the file of learned Commissioner (Appeals) for de novo adjudication on merits after providing adequate opportunity of being heard to the assessee. In

case, there is any defect in filing of the appeal by the assessee, learned Commissioner (Appeals) must afford reasonable opportunity to the assessee to remove such defect. Grounds are allowed for statistical purposes.

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

Order pronounced through notice board under rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963, on 17.09.2020

Sd/-
N.K. PRADHAN
ACCOUNTANT MEMBER

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 17.09.2020

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai