

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "ए", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "A", CHANDIGARH

श्री एन.के.सैनी, उपाध्यक्ष एवं श्री आर. एल. नेगी, न्यायिक सदस्य
BEFORE: SHRI. N.K.SAINI, VP & SHRI. R.L. NEGI, JM

आयकर अपील सं./ ITA NO.1109/Chd/2019
निर्धारण वर्ष / Assessment Year : 2008-09

M/s Cheema Spintex Limited S.C.O. 206-207, 3 rd Floor, Sector 34A Chandigarh, (S.C.O. 64-65, 3 rd Floor, Sector 17A Chandigarh	बनाम	The Additional CIT Range IV, Chandigarh
स्थायी लेखा सं./PAN NO: AAACC6786C		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Tej Mohan Singh, Advocate
राजस्व की ओर से/ Revenue by : Shri Arvind Sudarshan, JCIT, DR

सुनवाई की तारीख/Date of Hearing : 28/09/2020
उदघोषणा की तारीख/Date of Pronouncement : 28/09/2020

आदेश/Order

PER N.K. SAINI, VICE PRESIDENT

This is an appeal by the Assessee against the order dt. 17/05/2019 of the Ld. CIT(A)-1, Chandigarh.

2. The Registry has pointed out that the appeal filed by the assessee is late by two days. The Assessee moved an application for condonation of delay stating therein as under:

Respectfully submitted as under: -

- 1. That the above mentioned assessee-company received the appellate order in Appeal No. 543/10-11 dated 17.05.2019 of the Hon'ble Commissioner of Income Tax (Appeals)-1, Chandigarh on 07th June 2019 for the Assessment Year 2008-09.*
- 2. That the appeal was filed on 08th August 2019 which is said to be late by 2 days in the show cause notice issued by the Assistant Registrar, Hon'ble ITAT.*
- 3. That it is submitted that the assessee company had received the appellate order on 07th June 2019 and the same was forwarded to our office on 10th June 2019. The assessee company's account officer on being asked the date of receipt by our office clerk stated*

10th June 2019. In fact 10th June 2019 was the date on which the order was received in the undersigned's office and inadvertently the same was mentioned in Form No. 36.

4. That there being no mala fide intention of not filing the appeal in time, it is prayed that the delay may please be condoned.

5. That the affidavit of the accounts officer of the assessee company Mr. Birendra Singh is enclosed herewith.

It is, therefore, respectfully prayed that the delay be condoned there being a reasonable cause and in the interest of substantial justice, the appeal be heard on merits.

In support of the above application an affidavit has also been filed which read as under:

I, Birendra Singh, son of Mr. Pratap Singh, Accounts Officer of Cheema Spintex Limited having its registered office at House No. 176/2, Sector 41-A, Chandigarh do hereby solemnly affirm and declare as under:-

1. That the appeal for Assessment Year 2008-09 was filed before the Hon'ble Income Tax Appellate Tribunal, Chandigarh on 08/08/2019.

2. That the appellate order in Appeal No. 543/10-11 dated 17.05.2019 was received on 07th June, 2019 on mail.

3. The said appellate order was forwarded to our counsel's (M/s Khurana Vineet & Associates, Chartered Accountants) office on 10th June, 2019.

4. At the time of filing of the appeal on 08th August, 2019, inadvertently in Form No. 36 the date of receiving the appellate order was mentioned as 10th June, 2019 instead of 07th June, 2019, on the mistaken premise that the order had been received on 10th June, 2019.

3. During the course of hearing the Ld. Counsel for the Assessee reiterated the contents of the aforesaid application and requested to condone the delay of two days.

4. Ld. DR although opposed the aforesaid application but could not controvert the contents of the said application.

5. After considering the submissions of both the parties we are of the view that small delay of two days may be condoned. Accordingly the appeal is admitted.

6. Following grounds have been raised in this appeal :

1. That on the facts and circumstances of the case the order of the assessing officer under section 143(3) assessing the loss at Rs. 1,14,38,250/- without correctly appreciating the facts of the case is bad in law and void-ab-initio. The assessee company was not operating at this address and as such the notices/summons were been sent to the wrong address.

2. That the Ld. Commissioner of Income Tax (Appeals) has further erred in upholding the disallowance of Rs. 29,94,224/- out of commission under the provisions of Section 40(a)(ia) made by the Assessing Officer which is arbitrary and unjustified.

3. That the Ld. Commissioner of Income Tax (Appeals) has further erred in upholding the disallowance of Rs. 5,86,895/- out of interest towards capital work in progress made by the Assessing Officer which is arbitrary and unjustified.

4. That the Ld. Commissioner of Income Tax (Appeals) has further erred in upholding the disallowance of carry forward of unabsorbed depreciation and current year losses.

5. That the order of the Ld. Commissioner of Income Tax (Appeals) is erroneous, arbitrary, opposed to law and facts of the case and is, thus, untenable.

7. The main grievance of the assessee in this appeal is that the notices were sent to the wrong address which were not received by the assessee.

8. Facts of the case in brief are that the assessee filed its return of income on 30/09/2008 declaring NIL income which was processed under section 143(1) of the Income Tax Act, 1961 (hereinafter referred to as 'Act') on 20/03/2010. Later on the case was selected for scrutiny. The A.O. framed the assessment at a loss of Rs. 1,14,38,250/- and unabsorbed depreciation of Rs. 42,38,64,687/- instead of loss declared by the assessee at Rs. 2,25,81,494/- and unabsorbed depreciation of Rs. 42,38,64,687/-, by making various additions.

9. Being aggrieved the assessee carried the matter to the Ld. CIT(A) who passed the impugned order ex parte and confirmed the action of the A.O. by observing that nobody attended in the appeal proceedings hence finding of the A.O. stands non rebutted.

10. Now the assessee is in appeal.

11. Ld. Counsel for the assessee submitted that no notice for hearing was received by the assessee, therefore the Ld. CIT(A) was not justified in confirming the order passed by the A.O. without providing due and reasonable opportunity of being heard to the assessee.

12. In his rival submissions the Ld. DR strongly supported the orders of the authorities below.

13. We have considered the submissions of both the parties and perused the material available on the record. In the present case the Ld. CIT(A) in para 4 of the

impugned order mentioned the dates of various notices issued through Speed Post, he also mentioned that the notices sent by Speed Post were received back with remarks "shifted" / "no such company found on the given address". On the contrary the contention of the assessee in Ground No. 1 is that the notices / summons were sent on the wrong address. It is well settled that nobody should be condemned, unheard as per the maxim, "audi alteram partem".

14. In the present case, it is not brought on record to substantiate that notice for hearing was served upon the assessee. We therefore by keeping in view the principles of natural justice, deem it appropriate to set aside this case back to the file of Ld. CIT(A) to be adjudicated afresh in accordance with law after providing due and reasonable opportunity of being heard to the assessee.

15. In the result, appeal of the Assessee is allowed for statistical purposes.

(Order pronounced in the open Court on 28/09/2020)

Sd/-
आर. एल. नेगी
(R.L. NEGI)
न्यायिक सदस्य/ Judicial Member
AG
Date: 28/09/2020

Sd/-
एन.के.सैनी,
(N.K. SAINI)
उपाध्यक्ष / VICE PRESIDENT

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar