

आयकर अपीलिय अधीकरण, न्यायपीठ –“B(SMC)” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “B(SMC)” BENCH: KOLKATA
[Before Shri A. T. Varkey, JM]

I.T.A. No. 276/Kol/2020
Assessment Year: 2012-13

East India Spinning Pvt. Ltd. (PAN: AABCF 5441 P)	Vs.	ITO, Ward-10(3), Kolkata
Appellant		Respondent

Date of Hearing (Virtual)	02.02.2021
Date of Pronouncement	05.02.2021
For the Appellant	Shri Vikash Surana, A.R
For the Respondent	Shri Jayanta Khanra, Sr. D.R

ORDER

This is an appeal preferred by the assessee against the order of Ld. CIT(A)-4, Kolkata dated 31.01.2020 for Assessment year 2012-13.

2. At the outset, the Ld. A.R of the assessee Shri Vikash Surana pointed out that the impugned order is an ex-parte order of the Ld. CIT(A). According to Ld. A.R, from a perusal of the impugned order it can be noted that the Ld. CIT(A) alleges that the assessee company failed to explain the source of Rs. 15,00,000/- (share capital) received from M/s Welcome Dealcom Pvt. Ltd.. However, it was pointed out by the Ld. A.R that the assessee had filed detailed written submission along with supporting documents on 25.10.2018 which is evident from the Department’s seal affixed, acknowledging receipt of the same (documents). Thus, according to Ld. A.R, the Ld. CIT(A) erred in observing that the assessee failed to explain the source of Rs. 15 Lakhs. According to Ld. A.R, it was brought to the notice of the First appellate authority that the share subscribers M/s Welcome Dealcom Pvt. Ltd. had undergone scrutiny assessment u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as the “Act”) wherein the AO was pleased to tax the very same amount of Rs. 15 Lakhs in its hand. Therefore, according to Ld. A.R, taxing the assessee company

again on the same amount would amount to double taxation which is not permissible. Per contra, the Ld. D.R opposing the submission of assessee pointed out that these facts were not placed before Ld. CIT(A), so it should be restored back to the file of Ld. CIT(A).

3. Having heard both the parties, I make it clear that I am not entering into merits of the addition of Rs. 15 Lakhs. It is noted that the Ld. CIT(A) has passed an ex-parte order by noting that the assessee has failed to explain the sum of Rs. 15 Lakhs which was added by AO. Whereas according to Ld. A.R, the assessee had filed all the documents along with written submission on 25.10.2018 before the Ld. CIT(A). In such a scenario, the Ld. CIT(A) was duty bound to decide the appeal in accordance to Section 250(6) of the Act by passing a reasoned order. Section 250(6) of the Act reads as under:

“250(6).The order of the Commissioner (appeals) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reason for the decision.”

4. Since the assessee had filed written submission along with supporting documents before the Ld. CIT(A) on 25.10.2018, the Ld. CIT(A) should have disposed of the appeal on merits after going through the contents of the written submission and documents filed along with it in accordance to law. Since it has not been done, I am inclined to set aside the impugned order of Ld. CIT(A) and restore the appeal back to the file of Ld. CIT(A) to decide the appeal on merits after going through the written submission as well as documents supporting it in accordance to law.

5. In the result, the appeal of the assessee is allowed for statistical purposes.

Order is pronounced in the open court on 5th February, 2021.

Sd/-
(A. T. Varkey)
Judicial Member

Dated: 05.02.2021

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- East India Spinning Pvt. Ltd., Unit No. 227, 2nd Floor, 21, Hemanta Basu Sarani, B. B. D. Bag, Kolkata-700001
2. Respondent – ITO, Ward-10(3), Kolkata
3. The CIT(A)- 4, Kolkata (sent through e-mail)
4. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata