

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, " " चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, "B", CHANDIGARH

BEFORE SMT ANNAPURNA GUPTA, ACCOUNTANT MEMBER &
SHRI R.L NEGI, JUDICIAL MEMBER

आयकर अपीलसं./ITA Nos.1359/CHD/2019

निर्धारण वर्ष / Assessment Year : 2008-09

M/s Roland Exports, 407-C, The Mall, Ludhiana; 141001	बनाम	The ACIT, Circle-7, Ludhiana
स्थायी लेखासं./PAN NO: AAFFR6571A		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

Hearing through video Conferencing

निर्धारित की ओरसे/Assessee by : Shri Sudhir Sehgal, Advocate
राजस्व की ओरसे/ Revenue by : Shri Ashok Kumar, Addl. CIT

सुनवाई की तारीख/Date of Hearing : 17.12.2020
उद्घोषणा की तारीख/Date of Pronouncement : 24.02.2021

आदेश/Order

Per R.L. Negi, Judicial Member:

The assessee has filed the present appeal against the order dated 30.7.2019 passed by the Commissioner of Income Tax (Appeals)-3, Ludhiana [for short 'the CIT(A)'] pertaining to assessment year 2008-09, whereby the Ld. CIT(A) has dismissed the appeal filed by the assessee against the assessment order passed u/s 143(3) read with section 263 of the Income Tax Act, 1961 (for short 'the Act').

2. Brief facts of the case are that the assessee firm carrying on the business of manufacturing, texturing and twisting of cotton yarn, filed its return of income for the assessment year under consideration

declaring total income of Rs. 64,76,920/- The Assessment Officer (AO) completed the assessment u/s 143(3) of the Act after making addition of Rs. 50,000/- on account of unexplained expenses on agreed basis.

3. Since the assessee had claimed deduction u/s 80IB in respect of Kathua Unit amounting to Rs. 53,81,109/- and the AO had allowed the same, the Commissioner of Income Tax-III, Ludhiana (CIT) issued notice to the assessee to show cause as to why the assessment order should not be revised u/s 263 of the Act. The Ld. CIT after hearing the assessee, set aside the assessment order *inter alia* holding that there is a lack of enquiry in respect of claim u/s 80IB; that there is a huge gap in GP rate of Kathua Unit and Ludhiana Unit and that there are discrepancies with regard to value of purchase, freight inward quantity discount in respect of Kathua unit and in respect of unverified unsecured loans. Accordingly, the Ld. CIT directed the AO to pass the assessment order afresh. In compliance thereof, the AO passed assessment order u/s 143(3) read with section 263 of the Act and determined the total income of the assessee at Rs. 1,91,29,410/- (rounded of), after making addition of Rs. 40,72,489/- on account of unverified quantity discount, addition of Rs. 84,00,000/- u/s 68 of the Act and addition of Rs. 1,80,000/- on account of salary paid at Kathua unit. The assessee challenged the assessment order before the CIT(A) Ludhiana. The Ld. CIT(A) after hearing the assessee, dismissed the appeal of the assessee and confirmed the additions made by the AO.

4. Against the said findings of the Ld. CIT(A), the assessee is in appeal before this Tribunal. The assessee has challenged the impugned order by raising the following effective grounds: -

- “1. *That on the facts and in the circumstances of the case and in law, Worthy CIT(A) erred in confirming the action and sustaining the addition made by Ld. AO of Rs. 1,26,52,489/-(One Crore Twenty Six Lacs Fifty Two Thousand Four Hundred Eighty Nine Only) which is totally illegal, unjustified, arbitrary and against the facts of the case, relief nay please be granted by quashing the total addition made by Ld. AO Amounting to Rs. 1,26,52,489/- on different accounts/ heads.*
2. *That on the facts and in the circumstances of the case and in Law, The Worthy CIT(A) erred in confirming the action of the Ld. AO in disallowing the quantity discount amounting to Rs. 40,72,489/-(Rupees Forty Lac Seventy Two thousand four hundred eighty nine Only) and adding back to the income of the Appellant.*
3. *That on the facts and in the circumstances of the case and in Law the, Worthy CIT (A) erred in sustaining the addition of Rs 84,00,000/-(Rupees Eighty-Four Lacs Only) made U/s 68 of the Income Tax Act, by wrongly and illegally disowning the facts/ proofs of the Appellant/ Assessee filed/ produced, documents submitted about the genuineness and creditworthiness of the unsecured loan lenders and treating it as a unexplained loans.*
4. *That on the facts and in the circumstances of the case and in Law the, Worthy CIT (A) erred in sustaining the addition made by Ld. AO U/s 143 (3)/263 of Income Tax Act, 1961 without appreciating that all the additions made are without considering legally admissible documents and ignoring the burden discharged by the Assessee/Appellant by bringing the legally valid evidences produces at the time of the Appellant proceedings U/S 68 of the Income Tax Act.*
5. *That on the facts and in the circumstances of the case and in Law the, Worthy CIT (A) erred in sustaining the addition made by Ld. AO on account of disallowance of salary amounting to Rs.1,80,000/- (Rupees One Lac Eighty Thousand Only) w.r.t. Kathua unit.*

6. *That on the facts and in the circumstances of the case' and in Law the, Worthy CIT (A) erred in sustaining the addition made by Ld. AO U/s 143(3)/263 of the Income Tax Act, 1961 without appreciating the documents/ facts produced/brought on record and legally admissible.*
 7. *That on the facts and in the circumstances of the case and in law, the Worthy CIT (A) erred in not considering the additional evidences filed/ submitted at the time of appellate proceedings by rejecting the application of the Appellant made under Rule 46A of the Income Tax Rule, 1962 for admission of addition evidences.*
 8. *That on the facts and in the circumstances of the case and in Law, the Worthy CIT(A) erred in not restoring the returned income declared by the Assessee/appellant in its returned income.*
 9. *That on the facts and in the circumstances of the case and in Law, the Worthy CIT(A) erred in sustaining the addition made by Ld. AO by recording incorrect facts and finding.*
 10. *That on the facts and in the circumstances of the case and in Law the, Worthy CIT(A) erred in not deleting the additions made by Ld. AO which was unlawful and made in violation of principal of natural justice.*
 11. *That on the facts and in the circumstances of the case and in Law, the Ld. CIT (A) erred in confirming the additions made by Id. AO on the basis of conjectures and surmises and non- plausible reasons and that the charging of interest and levying of penalty is totally unjustified and legally unsustainable and not consequential in nature.”*
5. At the outset, the Ld. Counsel for the assessee submitted before us that the assessee has challenged the impugned order *inter alia* on the ground that the Ld. CIT(A) has erred in not considering the additional evidence filed by the assessee under Rule 46A of the Income Tax Rules, 1962. The Ld. counsel contended that since the Id. CIT(A) has passed the impugned order without taking into consideration the documents

produced as additional evidence, great prejudice has been caused to the assessee. Accordingly, the Ld. Counsel submitted that the impugned order may be set aside and the appeal may be sent back to the Ld. CIT(A) for adjudicating the issues raised in the appeal afresh, after taking into considering the additional evidence produced during the course of appellate proceedings.

6. The Ld. counsel further submitted that since the assessee could not furnish the complete details before the AO due the circumstances beyond control of the assessee, during the appellate proceedings, additional documents were furnished under Rule 46A of the Income Tax Rules for admission of additional evidence. However, the ld. CIT(A) rejected the application of the assessee without assigning any cogent and convincing reasons. The ld. counsel further submitted the assessee could not file the complete details before the AO because sufficient time was not afforded to the assessee for this purpose.

7. The Ld. Counsel further contended that even during the proceeding u/s 263 of the Act, the assessee had to change its counsel and due to some misunderstandings between the counsel and the assessee, the complete documents could not be filed on the date fixed and sought adjournments on two/three occasions. The Ld. CIT(A) rejected the request of the assessee for further adjournment holding that the case is getting barred by limitation on 31.3.2013. Accordingly, the counsel had to file reply within a short period of two days. The Ld. Counsel further

contended that since the assessee had sufficient cause for non-submitting the complete details before the Assessing Officer, the CIT(A) ought to have allowed the application for admission of additional evidence during the appellate proceedings.

8. Placing reliance on the judgment of the Hon'ble Punjab and Haryana High Court in the case of *CIT vs. Mukta Metal Works 336 ITR 555 (P&H)*, the Ld. Counsel submitted that the action of the Ld. CIT(A) is contrary to the ratio laid down by the Hon'ble High Court in the said case. In view of the facts of the case and the judgment of the Hon'ble High Court, the Ld. counsel submitted that the order of the Ld. CIT(A) may be set aside and the case may be sent back to the Ld. CIT(A) for deciding the appeal afresh after considering the additional evidence placed during the appellate proceedings.

9. On the other hand, the Ld. Departmental Representative (DR) supporting the order passed by the Ld. CIT(A), submitted that since the assessee had failed to submit the details despite sufficient opportunity afforded by the Assessing Officer the Ld. CIT(A) has rightly rejected the application for admission of additional documents filed by the assessee during the appellate proceedings.

10. We have heard the rival submissions of the parties and perused the material on record. As pointed out by the Ld. Counsel, vide ground No 7 of the appeal, the assessee has challenged the impugned order on the ground that the Ld. CIT(A) has erred in rejecting the application filed

by the assessee under Rule 46 of the Income Tax Rules (for short the Rules) for admitting additional evidence. Under Rule 46A, the first appellate authority has power to admit the additional evidence where the Assessing Officer has refused to admit evidence which ought to have been admitted; or the applicant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the Assessing Officer; or where the appellant was prevented by sufficient cause for producing before the Assessing Officer any evidence which is relevant to any ground of appeal; or where the Assessing Officer has made the order appealed against without giving sufficient opportunity to the appellant to adduce the evidence relevant to any ground of appeal. Admittedly, during the course appellate proceedings, the assessee submitted eight documents mentioned in para 6.6 of the impugned order, along with the application under Rule 46 of the Rules for admitting the same as additional evidence. The Ld. CIT(A) forwarded the said documents to the AO for examining the veracity of the same. We notice that the AO objected the request of the applicant/appellant on the ground that the assessee has failed to produce the details/documents during the assessment proceedings despite sufficient time afforded for this purpose. On the recommendation of the AO, the Ld. CIT(A) rejected the application filed by the assessee under Rule 46A of the Act.

11. As per the settled law, where the additional evidence is essential for just decision of the case, the same should be admitted in the interest

of justice. In the present case, the Ld. CIT(A) has rejected the prayer of the assessee holding that the assessee has failed to produce those documents during the assessment proceedings despite sufficient opportunities afforded by the AO. The authorities below have even not examined as to whether these documents are essential for just decision of the case. Therefore, we find merit in the contention of the assessee that the said documents are essential for the just decision of the case. Now the question arises as to whether the assessee had a sufficient cause which prevented it from filing the same during the assessment proceedings. As contended by the Ld. Counsel, in this case pertains to assessment year 2008-09 and the original assessment was framed on 14.12.2010. The assessee received Notice u/s 143(2) & 142(1) in connection with assessment u/s 143(3) read with section 263 of the Act on 09.08.2013. In response thereof, the assessee filed reply and furnished books of account and other documents. The AO further asked the assessee to furnish the addresses of the concerned entities for verification of quantity discount in question vide order sheet dated 07.02.2014. On 12.03.2014 the representative of the assessee informed the AO that he could not get the addresses due to his illness. The AO accordingly directed the AR to produce the representatives along with the documents 18.03.2014. However, the representatives did not appear on the said date. Thereafter, two three short dates were given to the assessee to produce the concerned persons and the documents. Since the

assessee failed comply with the directions of AO, he completed the assessment on 28.03.2014. From the aforesaid facts it can be concluded that the assessee was given about 15 days to produce the concerned persons and documents to examine and determine the issue pertaining to the quantity discount amounting to Rs. 40,72,489/-. Similarly, in respect of the addition u/s 68 of the Act, the assessee filed reply on 24.03.2014 and the assessment order was passed on 28.03.2014. Under these circumstances, we find merit in the contention of the Ld. Counsel that since the case pertained to the assessment year 2008-09, the assessee could not contact the concerned persons and collect the required documents from the concerned quarters to produce before the AO within the period afforded to the assessee. In our considered view, the assessee had a sufficient reason for not filing the essential documents to substantiate its claim before the AO. Under these circumstances, the Ld. CIT(A) ought to have allowed the application for admission of additional evidence submitted before him and decided the appeal considering the additional evidence produced under Rule 46. Therefore, we find merit in the contention of the Ld. Counsel for the assessee that the appeal should be heard afresh in the light of the additional evidence produce by the assessee.

12. Hence, in view of the facts and the circumstances of the case discussed in the foregoing paras and in the light of the judgment of the Hon'ble jurisdictional High Court relied upon by the Ld. counsel, we

allow this ground of appeal of the assessee and set aside the impugned order passed by the Ld. CIT(A), without going into the merits of the case and remit the appeal back to the Ld. CIT(A) for deciding the same afresh in the light of the additional evidence produced by the assessee during the appellate proceedings, under Rule 46 of the Income Tax Rules.

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

Order pronounced on 24.2.2021.

Sd/-
(ANNAPURNA GUPTA)
Accountant Member
Dated 24.02.2021
“आर.के.”

Sd/-
(R.L. NEGI)
Judicial Member

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त/ CIT
4. आयकरआयुक्त (अपील)/ The CIT(A)
5. विभागीयप्रतिनिधि, आयकरअपीलीयआधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्डफाईल/ Guard File

आदेशानुसार/ By order,
सहायकपंजीकार/ Assistant Registrar