

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC" MUMBAI**

**BEFORE SHRI SAKTIJIT DEY (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 5093/MUM/2019
Assessment Year: 2009-10**

ITO-17(1)(4),
Room No. 115, 1st floor,
Aayakar Bhavan,
Mumbai-400020.

Appellant

Vs. M/s Electric Corporation of
India,
Shalimar Industrial Estate, G-9,
Matunga Labour Comp,
Matunga, Mumbai-400019.
PAN No. AAAFE 0529 L
Respondent

Revenue by : Mr. Sanjay J. Sethi, DR
Assessee by : None

Date of Hearing : 24/02/2021
Date of pronouncement : 18/03/2021

ORDER

PER N.K. PRADHAN, A.M.

This is an appeal filed by the Revenue. The relevant assessment year is 2009-10. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-56, Mumbai [in short 'CIT(A)'] and arises out of the assessment completed u/s 143(3) r.w.s. 147 of the Income Tax Act 1961, (the 'Act').

Though the case was fixed for hearing on 24.02.2021, neither the assessee nor its authorized representative appeared before the Bench on the above dates. As there is non-compliance by the assessee, we are proceeding to

dispose off this appeal after examining the materials available on record and after hearing the Ld. Departmental Representative (DR).

2. The grounds of appeal filed by the Revenue read as under :

1. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in treating the notice under section 148 of the Act to be defective entirely on technical grounds, notwithstanding that the notice under section 148 was served in person and the signature of the recipient of the notice is available on records.
2. Whether on the facts and circumstances of the case and in law the Ld. CIT(A) erred in not considering that section 148 of the Income-tax Act requires the notice to be issued within the limitation period, and there is no stipulation that service of the same should be made within the aforesaid period.
3. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in not considering that by allowing the assessee's appeal on purely technical grounds, he had indirectly allowed assessee's claim of bogus purchase, notwithstanding that the same was made on the basis of credible information received from the Sales Tax Department, supported by independent enquiries conducted by the Assessing Officer?

3. Briefly stated, the facts of the case are that the assessee filed its return of income for the assessment year (AY) 2009-10 on 24.09.2009 declaring total income at Rs.1,44,280/-. The assessee deals in electrical appliances. On receipt of information from the Director General of Income Tax (Inv), Mumbai that the assessee has obtained bogus purchase bills of Rs.9,23,867/- (Rs.4,04,749/- from Shruti Sales Corporation and Rs.5,19,118/- from Karan Enterprises), the Assessing Officer (AO) issued notice u/s 148 for reopening the assessment. In response to it, as recorded by the AO, the assessee stated that the return of income filed on 24.09.2009 may be treated as return filed in response to notice

u/s 148 of the Act. During the course of re-assessment proceedings, as recorded by the AO, the assessee filed (i) copies of ledger accounts of the suspicious parties, (ii) copies of purchase bills, (iii) bank statements and (iv) copy of purchase register for the FY 2008-09.

However, the AO observed that the assessee failed to file direct evidence such as stock register, journal and indirect evidence such as delivery challans, lorry receipts, octroi payment etc.

Considering the facts of the case, the AO estimated the profit @ 12.5% of the disputed purchases of Rs.9,23,867/- and accordingly brought to tax Rs.1,15,483/-.

4. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). It was stated before him that notice u/s 148 was not served to the assessee and no letter was filed treating the return already filed pursuant to notice u/s 148 of the Act. The grounds of appeal filed by the assessee before the Ld. CIT(A) pertain to the above contentions. In order to verify the contentions raised in the grounds of appeal, the Ld. CIT(A) issued a letter dated 03.12.2018 to the AO to verify and reply (i) whether notice u/s 148 was served and (ii) whether the assessee had requested to treat the original return as one filed in response to notice u/s 148.

The Ld. CIT(A) mentioned that if the answer to the above two queries is in affirmative, copy of proof of same be forwarded by 15.12.2018. As there was no reply, he directed the AO to forward a report by 23.04.2019 and in alternate, forward assessment record to his office. There was no response from the AO.

Thereafter, the Ld. CIT(A) sent a reminder to the AO for compliance by 15.05.2019. Again there was no response from the AO.

Therefore, the Ld. CIT(A) proceeded to decide the appeal on the basis of Form 35 and enclosures before him. He allowed the appeal filed by the assessee by observing that :

“7. When a person makes a claim, he is responsible for same as a false statement before an Income Tax authority can attract prosecution. In ground the claim is that a particular notice is not served and a particular letter was not filed. The only person to disprove the claim is Assessing Officer here as (A) as issuing authority of notice u/s 148 he is bound to keep acknowledgment and (B) if a letter is received he is duly bound produce the letter or further duly authenticated copy of order sheet signed by competent person.

8. Once a claim is made and not disproved despite reasonable opportunity provided to Assessing Officer being elementary particulars, the matter goes in favour of the claimant i.e., the appellant. The reassessment has at initiation stage two parts – service of notice u/s 148 and compliance to same. Both these are not established despite making a recording in assessment order. Thus the claim of appellant raised in the ground is found to be valid.

9. In view of the above I cancel the reassessment made by the Assessing Officer. The 5 grounds against “Defective notice u/s 148” are allowed.

10. Other grounds of appeal needs no adjudication in view of decision above.

11. The appeal is allowed.”

5. Before us, the Ld. DR relies on the order of the AO.

We have heard the Ld. DR and perused the relevant materials on record. In the instant case, the grounds of appeal filed before the Ld. CIT(A) are as under :

“1. The Income Tax Officer while passing the order u/s 143(3) r.w.s 147 of the Income Tax Act, has merely stated in his opening para of the assessment order that the Assessee’s case was reopened for the year 2009-10 by issuing notice u/s 148 of the Act on 20.03.2014. He has nowhere stated when the said notice was served on the appellant.

2. The authorized representative/partner of the firm had objected to the issue of the notice u/s 142(1) on letter dated 03 February 2015 on the ground that no notice u/s 148 was issued and that the notice u/s 142(1) issued is bad in law.

3. The appellant did not at any time requested the Income Tax Officer to treat the Return filed originally in response to notice u/s 148 as is stated by the Income Tax Officer in his order. In fact when no proper notice is served within the prescribed time, how can the appellant ask the Officer to treat the originally return as filed in response to the said impugned notice?

4. The appellant stated that the order passed by the Income Tax Officer on 27th February 2015 for the year 2009-10 u/s 143(3) r.w.s. 147 is band in law and needs to be quashed.

5. Without prejudice to the above, the appellant submit the following grounds objecting to the addition made to the returned income.

5.1 Considering the above grounds of appeal, the Ld. CIT(A) has rightly called for a report from the AO. Section 250(4) of the Act states that “the Commissioner (Appeals) may, before disposing of any appeal, make such further inquiry as he thinks fit, or may direct the Assessing Officer to make

further inquiry and report the result of the same to the Commissioner (Appeals).”

As mentioned earlier, there was repeated non-compliance by the AO to the letters issued by the Ld. CIT(A). In such a situation like the present one, the Ld. CIT(A) has rightly decided the appeal on the basis of materials available on record before him.

In view of the facts and circumstances of the case narrated above, we affirm the order of the Ld. CIT(A).

6. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open Court on 18/03/2021.

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER

Mumbai;

Dated: 18/03/2021

Rahul Sharma, Sr. P.S.

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//

BY ORDER,

(Dy./Assistant Registrar)
ITAT, Mumbai