

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH: CHENNAI

श्री धुव्वुरु आर.एल. रेड्डी , न्यायिक सदस्य एवं
डॉ एम.एल. मीना, , लेखा सदस्य के समक्ष

BEFORE SHRI DUVVURU R.L. REDDY , JUDICIAL MEMBER AND
Dr. M.L.MEENA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1809/Chny/2019
निर्धारण वर्ष /Assessment Year: 2010-11

The Dy. Commissioner of Income
Tax,
Corporate Circle-1(2),
Chennai.

v. M/s.Bay-Forge Ltd.,
Palayanoor PO,
Vedanthangal Road,
Pukkath Village,
Mudurantakam Taluk,
Kancheepuram,
Tamil Nadu-603 308.
[PAN: AAACF 0453 D]
(प्रत्यर्थी/Respondent)

(अपीलार्थी/Appellant)

Department by : Mr.N.Sanjay Gandhi, JCIT
Assessee by : None
सुनवाई की तारीख/Date of Hearing : 09.11.2021
घोषणकी तारीख /Date of Pronouncement : 09.11.2021

आदेश / ORDER

PER M.L.MEENA, ACCOUNTANT MEMBER:

The Revenue filed this appeal against the order of the Commissioner of Income Tax (Appeals)-1, Chennai, in ITA No.183/CIT(A)-1/2016-17 dated 29.03.2019 for the AY 2010-11.

2. At the time of hearing, the Ld. DR for the Department submitted that the Ld. CIT(A) allowed the assessee's appeal based on the fresh evidences produced during the course of appellate proceedings without granting an opportunity of being heard to the assessee under Rule 46A of the Income

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tax Rules, for verification of such additional evidences by way of calling for a remand report in rebuttal. He further submitted that the issue is covered under the Cluase-10(c) of the Circular No.3/2018 dated 11.07.2018. He has prayed that the order of the Ld.CIT(A) is set aside and that of the AO restored.

3. None appeared on behalf of the assessee.

4. Having heard the Ld.DR and perusing the material on record and the impugned order passed by the Ld.CIT(A), we find that before the Cit(A), the assessee while objecting to the disallowance made by the AO had relied upon the fresh evidences to defend no forex fluctuation and the transaction comprised both capital and Revenue items. In our view, the Ld.CIT(A) ought to have called for Remand Report under rule 46 from the AO in rebuttal to the fresh evidences admitted by him in the adjudication of the matter and granting relief to the assessee.

4. The provisions of Rule 46A of the IT Rules, 1962 is read as under:

46A. (1) The appellant shall not be entitled to produce before the [Deputy Commissioner (Appeals)] [or, as the case may be, the Commissioner (Appeals)], any evidence, whether oral or documentary, other than the evidence produced by him during the course of proceedings before the [Assessing Officer], except in the following circumstances, namely :—

(a) where the [Assessing Officer] has refused to admit evidence which ought to have been admitted ; or

(b) where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the [Assessing Officer] ; or

(c) where the appellant was prevented by sufficient cause from producing before the [Assessing Officer] any evidence which is relevant to any ground of appeal ; or

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(d) where the [Assessing Officer] has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.

(2) No evidence shall be admitted under sub-rule (1) unless the [Deputy Commissioner (Appeals)] [or, as the case may be, the Commissioner (Appeals)] records in writing the reasons for its admission.

(3) The [Deputy Commissioner (Appeals)] [or, as the case may be, the Commissioner (Appeals)] shall not take into account any evidence produced under sub-rule (1) unless the [Assessing Officer] has been allowed a reasonable opportunity—

(a) to examine the evidence or document or to cross-examine the witness produced by the appellant, or

(b) to produce any evidence or document or any witness in rebuttal of the additional evidence produced by the appellant.

(4) Nothing contained in this rule shall affect the power of the [Deputy Commissioner (Appeals)] [or, as the case may be, the Commissioner (Appeals)] to direct the production of any document, or the examination of any witness, to enable him to dispose of the appeal, or for any other substantial cause including the enhancement of the assessment or penalty (whether on his own motion or on the request of the [Assessing Officer]) under clause (a) of sub-section (1) of section 251 or the imposition of penalty under section 271.]

5. From the above, it is evident that firstly, The Ld. CIT(A) can not admit an evidence under sub-rule (1) unless he records in writing the reasons for its admission and secondly, the CIT(A) shall not take into account any such evidence produced under sub-rule (1) unless the Assessing Officer has been allowed a reasonable opportunity. In view of the fact, we considered it deem fit to restore the matter back to the file of the CIT(A) to decide the issue afresh after calling for Remand Report from the AO on the evidences filed by the assessee as discussed in the impugned order. The assessee shall be at liberty to file its rebuttal on the Remand Report so furnished by the AO during the course of appellate proceedings. The Ld. CIT(A) is directed to examine all the grounds of appeal of the assessee afresh in view of the Remand Report furnished by the AO on the documentary evidences

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filed regarding the Accounting Standard followed and the rational of the losses suffered by the assessee on account of exchange difference as claimed against forex loss.

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

Order pronounced on the 09th day of November, 2021, in Chennai.

Sd/-

(धुव्वुरु आर.एल. रेड्डी)

(DUVVURU R.L. REDDY)

न्यायिक सदस्य/**JUDICIAL MEMBER**

Sd/-

(एम.एल.मीना)

(M.L.MEENA)

लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 09th November, 2021.

TLN

आदेश की प्रतिलिपि ँ ग्रेषित/**Copy to:**

1. ँ पीलार्थी/Appellant

2. प्रत्यर्थी/Respondent

3. आंकर आंक्त (ं पील)/CIT(A)

4. आंकर आंक्त/CIT

5. विभागीं प्रतिनिधि/DR

6. गार्ड फाईल/GF