

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA BENCH "C", KOLKATA**

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.974/Kol/2018
Assessment Year: 2010-11**

ITO, Ward-4(3), Kolkata		Associated Electro Engineering Pvt. Ltd.
	Vs.	5, Surendra Mohan Ghosh Sarani, Kolkata - 700001.
		PAN: AAGCA 7278 P
(Appellant)		(Respondent)

Present for:

Appellant by : None.

Respondent by : Shri Amol Kamat, CIT (DR)

Date of Hearing : 10.02.2022

Date of Pronouncement : 23.02.2022

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal by the Revenue is directed against the order passed by the Ld. CIT(A)-11, Kolkata for A.Y. 2010-11 vide order dated 10.01.2018.

2. None appeared before us on behalf of the assessee.

3. It is observed that there is a delay of four days in filing the instant appeal by the Revenue. The appellant has furnished an affidavit explaining the reasons for delay of four days. Considering the affidavit placed on record explaining the reasons for delay of four days, we condone the said delay in filing the instant appeal.

4. Brief facts culled out from the records are that the assessee filed its return of income for AY 2010-11 on 29.09.2010 declaring an income

of Rs. 1,09,679. The Ld. AO after issuing statutory notices u/s 143(2) and 142(1) of the Income-tax Act, 1961 (the Act) asked the assessee to furnish *inter alia* details in respect of 'advances from customers'. According to the Ld. AO, the assessee had shown an advance of Rs. 7,11,52,520 received from Orissa Manganese and Minerals Ltd. for which it had raised proforma sales invoice for approval of the customer. The Ld. AO called for confirmation u/s 133(6) of the Act from Orissa Manganese and Minerals Ltd. who had confirmed the transaction and reported the same with the assessee as 'purchase' in their books of accounts. The Ld. AO proceeded to add the 'advances from customers' of Rs. 7,11,52,520 received from Orissa Manganese and Minerals Ltd. as unexplained cash credits u/s 68 of the Act.

5. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A) who was pleased to delete the addition of Rs. 7,11,52,520 towards unexplained cash credit u/s 68, made by the Ld. AO.

6. Aggrieved by the aforesaid order of the Ld. CIT(A), the Revenue is in appeal before us by raising the following grounds of appeal:-

"i. That whether on the facts and circumstances of the case, the Ld. CIT(A) has erred in law and on facts by deleting the addition of Rs. 7,27,08,520/- on account of 'advance receipt against sale proceeds' u/s 68 of the I.T. Act, 1961.

ii. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts by deleting the addition of Rs. 7,27,08,520/- on account of 'advance receipt against sale proceeds' u/s 68 of the I.T. Act, 1961, without verifying the facts and deletion was made only on the basis of assessee's explanation at the time of appeal proceedings.

iii. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts by deleting the addition of Rs.

7,27,08,520/- on account of 'advance receipt against sale proceeds' u/s 68 of the I.T. Act, 1961, without remitting the issue before the AO for further examination and he has also erred in appreciating Rule 46A(3) of I.T. Rules, 1962."

7. Instant appeal has been fixed for hearing for more than twenty times giving ample opportunities to the assessee to defend its case. However, as noted, none appeared before us on behalf of the assessee. From the perusal of records before us and the facts discussed (supra), we are inclined to adjudicate on the appeal before us.

8. Ld. CIT(DR) Shri Amol Kamat pressed on ground no. 2 and 3 (supra) that Ld. CIT(A) deleted the addition of Rs. 7,27,08,520 without verifying the facts, only on the basis of explanation given by the assessee in the appellate proceedings and ignoring the application of Rule 46A of the Income-tax Rules, 1962 (the Rules). Before us, the Ld. CIT(DR) vehemently pressed to set aside the order of the Ld. CIT(A) and restore the matter back to the file of Assessing Officer affording him a reasonable opportunity of being heard for proper verification and examination of records.

9. We have heard the Ld. CIT(DR) and perused the material on records and observe that Ld. CIT(A) deleted the addition made by the Ld. AO on the basis of the explanation given by the assessee in the course of first appellate proceedings without its verification and examination. It is further noted that Ld. CIT(A) gave his decision ignoring the discussion and consideration of application of Rule 46A of the Rules.

10. On perusal of records before us and the discussion made above, according to us, it is fair and proper in the interest of justice to set aside the impugned order of Ld. CIT(A) and restore the issue of addition of Rs.

7,27,08,520 back to the file of Ld. AO with a direction to decide the same afresh on merits after proper verification and examination of material placed on record. Needless to say that reasonable opportunity of being heard be given to the assessee. The assessee is also directed to be diligent and make its submissions and furnish details to substantiate its claim.

11. In the result, the appeal of the revenue is treated as allowed for statistical purposes.

Order pronounced in the open court on 23.02.2022.

**Sd/-
(SANJAY GARG)
JUDICIAL MEMBER**

**Sd/-
(GIRISH AGRAWAL)
ACCOUNTANT MEMBER**

Kolkata, Dated: 23.02.2022.
Biswajit, Sr. P.S.

Copy to:

1. The Appellant: ITO, Ward-4(3), Kolkata.
2. The Respondent: Associated Electro Engineering Pvt. Ltd.
3. The CIT, Concerned, Kolkata
4. The CIT (A) Concerned, Kolkata
5. The DR Concerned Bench

//True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata