

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "A", BANGALORE**

Before Shri George George K, JM & Shri Laxmi Prasad Sahu, AM

ITA No.426/Bang/2022 : Asst.Year 2015-2016

&

SA No.26/Bang/2022

M/s.Patel Goods Carriers Pvt.Ltd. No.60 Jumma Masjid Road Bangalore – 560 002. PAN : AACCP3074G.	v.	The Deputy Commissioner of Income-tax Circle 5(1)(2) Bangalore.
(Appellant)		(Respondent)

Appellant by : Sri.T.Srinivasa Rao, CA

Respondent by : Sri.Suresh Rao, Addl.CIT-DR

Date of Hearing : 26.07.2022	Date of Pronouncement : 26.07.2022
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ORDER

Per George George K, JM :

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 09.05.2022. The relevant assessment year is 2015-2016. The assessee has also filed a Stay Application seeking stay of recovery of tax arrears.

2. The grounds raised read as follows:-

“1. The impugned order dated 09.05.2022 passed by the learned Commissioner of Income Tax(Appeals-11) Bangalore (herein after referred to the learned Commissioner) is highly arbitrarily illegal and being contrary to law requires to be cancelled and set aside.

2. The learned Commissioner is not justified to have concluded appellate proceedings in mechanical manner and without providing at least one more opportunity to the appellant to make their submissions in support of the grounds urged, in the interest of equity and natural justice.

3. The learned Commissioner ought to have appreciated that based on the facts and circumstances, as borne on records and the observations/findings of the learned assessing officer in the impugned order, the assessment proceedings fell under section

144 of the Income Tax Act 1961 and not under section 143(3) of the Act.

4. The learned Commissioner ought to have appreciated that since the assessment proceedings were under section 144 of the Act, the same was void in law having been framed without complying with the mandatory requirements of issue of a show cause notice before framing the impugned order dated 19.12.2017.

5. The learned Commissioner, in the facts and circumstances of the case and the issues involved ought to have provided one more opportunity of being heard in the matter since neither the appellate nor his authorized representative were aware of the hearing fixed on 05.05.2022.

6. The learned assessing officer was not justified in declining to entertain the appellant's request for invoking Rule 46A of the Income Tax Rules 1962, to establish the genuine nature of the expenditure incurred by the appellant, on a mistaken appreciation of the facts and circumstances of case and the issues involved.

7. The learned Commissioner ought to have appreciated that the appellant was justified in invoking Rule 46A since the original proceedings had been concluded unrepresented and that the necessity to seek one more opportunity to produce the documentary evidences before the learned assessing officer was on account of the learned assessing officer sending the remand report without taking into consideration the request dated 12.04.2019 praying for three(03) weeks' time to appear before him and produce the relevant documents in support of the application Rule 46A in violation of the principles of natural justice.

8. The learned commissioner, in the given circumstances, ought to have appreciated that the appellant was prevented, with reasonable cause, from producing the documents before the learned assessing officer and hence ought to have provided one more opportunity to produce the same under Rule 46A in the interest of justice.

9. The learned Commissioner is not justified in confirming the ad-hoc disallowance at 10% of the expenses incurred by the appellant failing to appreciate that those expenses related to (i) transportation charges;(ii) discounts allowed;(iii) office expenses and (iv) package, theft claim and water charges and ought to have provided an opportunity to the appellant to produce the same for his kind appreciation.

10. The learned Commissioner ought to have appreciated that the appellant's books of account were regularly audited and an audit under section 44AB had also been conducted and submitted along with the return of income and none of them had any adverse observations necessitating such an ad-hoc disallowance.

11. *The learned commissioner ought to have appreciated that the appellant was engaged in the activities of transportation and packing materials and hence operated with very thin margin ranging between 2.3.1 / 3.5.5 % as urged under grounds 4 of the appeal memorandum and ought to have appreciated that in the given circumstance the adopt disallowance of 10% was highly arbitrator and not justified.*

12. *The learned commissioner is not justified in declining to consider the request of the appellant under ground No.06 and restrict the disallowance, if any warranted based on the past trends which had been accepted by the department on the principles of consistency.*

For the above grounds and such other grounds that may be urged at the time of hearing with kind permission, the appellant most humbly prays that the appeal may kindly be allowed in the interest of justice.”

3. The brief facts of the case are as follows:

The assessee is a company. For the assessment year 2015-2016, the return of income was filed on 30.09.2015 declaring total income of Rs.50,49,500. The assessment was selected for scrutiny and notice u/s 143(2) of the I.T.Act was issued. The assessment was selected for scrutiny for the reason that huge amount of “other expenses” were claimed in the profit and loss account. The Assessing Officer, during the course of assessment proceedings, directed the assessee to furnish the details of “other expenses”. Even after providing multiple number of opportunities, the assessee did not provide the details called for by the A.O.. Consequently, the A.O. on adhoc basis disallowed 10% of the expenses and made an addition of Rs.1,10,81,103.

4. Aggrieved, the assessee preferred an appeal to the first appellate authority. Before the first appellate authority, the assessee submitted additional evidence. The additional evidence submitted was forwarded to the A.O. for his

comments. Since there is no appearance by the assessee before the A.O., the A.O. did not make any specific comments with regard to the additional evidence furnished by the assessee. The assessee before the CIT(A) again requested to provide another opportunity of being heard in relation to the additional evidence. The CIT(A), however, upheld the adhoc disallowance of 10% of “other expenses” as correct and in accordance with law.

5. Aggrieved by the order of the CIT(A), the assessee has filed the present appeal before the Tribunal. The learned AR has filed a paper book enclosing therein copies of the additional evidence submitted before the first appellate authority under Rule 46A of the Income-tax Rules, 1962, copies of notices issued by the A.O., etc. The learned AR candidly admits that the matter was not properly represented before the A.O. nor the CIT(A). Hence, it was prayed that in the interest of justice and equity, one more opportunity be provided to the assessee to prove its case.

6. The learned Departmental Representative supported the orders of the A.O. and the CIT(A).

7. We have heard rival submissions and perused the material on record. On perusal of the assessment order and the CIT(A), it is clear that there has been total lack of cooperation on the part of the assessee. The assessee has failed to give replies to the multiple notices issued by the A.O. The assessee has also not represented before the A.O. pursuant to the remand report sought by the CIT(A). We

strongly deprecated the actions of the assessee. However, in the interest of justice and equity, we are of the view that one more opportunity should be granted to the assessee to prove its case. Accordingly, the issues raised in the appeal are restored to the files of the A.O. The assessee shall cooperate with the Revenue and furnish the necessary proof for claiming deduction of "other expenses". The assessee shall not seek unnecessary adjournments and shall comply with the hearing notices issued by the A.O. The A.O. shall afford a reasonable opportunity of hearing to the assessee before a decision is taken in the matter. It is ordered accordingly.

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8. Since the appeal is disposed of, the stay application becomes infructuous, and accordingly, the same is dismissed.

9. In the result, the appeal filed by the assessee is allowed for statistical purposes and the stay application is dismissed. Order pronounced on this 26th day of July, 2022.

Sd/-
(Laxmi Prasad Sahu)
ACCOUNTANT MEMBER

Sd/-
(George George K)
JUDICIAL MEMBER

Bangalore; Dated : 26th July, 2022.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)-11, Bangalore.
4. The Pr.CIT (Central), Bangalore.
5. The DR, ITAT, Bengaluru.
6. Guard File.