

आयकर अपीलिय अधिकरण, कोलकाता पीठ “बी”, कोलकाता

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH: KOLKATA

श्री राजेश कुमार, लेखा सदस्य एवं श्री संजय शर्मा न्यायिक सदस्यके समक्ष

[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 48/Kol/2020
Assessment Year: 2012-13

M/s Powerplus Impex Pvt. Ltd. (PAN: AAECF 7765 J)	Vs.	ITO, Ward-5(2), Kolkata
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	14.12.2022
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	04.01.2023
For the Appellant/ निर्धारिती की ओर से	Shri S. M. Surana, Advocate
For the Respondent/ राजस्व की ओर से	Shri Sudipta Guha, CITDR

ORDER / आदेश

Per Rajesh Kumar, AM:

This is the appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-10, Kolkata (hereinafter referred to as the Ld. CIT(A)”) dated 27.12.2019 for the AY 2012-13.

2. The only issue raised by the assessee in the various grounds of appeal is against the order of Ld. CIT(A) confirming the share capital and share premium received from various share subscribers thereby upholding the order of AO.

3. At the outset, the Ld. Counsel for the assessee took us through the order passed by the Ld. CIT(A) wherein only two lines conclusion has been recorded on the basis of written submission of the assessee. We find that the appellate order is passed u/s 154 of the Act by Ld. CIT(A) after that the assessee moved a rectification petition before the Ld. CIT(A) that the original appellate order was passed by Ld. CIT(A) ex-parte without taking into consideration the written submissions filed by the assessee. The ld counsel also pointed out that in the original appellate order passed u/s 250 of the Act dated 29.11.2019, the Ld. CIT(A) has stated that the assessee has not filed any written submissions to defend the grounds of appeal and thus dismissed the appeal however when the assessee filed rectification petition pointing out that written submission was already filed, the Ld. CIT(A) simply reproduced the written submissions and recorded two line conclusion. That even after considering these written submissions of the assessee, the conclusion remains same. Therefore, the Ld. A.R prayed that the Ld. CIT(A) may kindly be directed to pass the order on merit by restoring the appeal back to the file of Ld. CIT(A).

4. The Ld. D.R. on the other hand admitted that the original appellate order was decided without considering the written submissions filed by the assessee whereas in the order passed u/s 154 of the Act, ld CIT(A) ld CIT(A) recorded two lines conclusion by simply stating that the written submissions were considered and the conclusion remains same thereby dismissing the appeal. The ld DR however left the issue to the wisdom of the bench.

5. After hearing the rival submissions and perusing the material on record, we find that the original appellate order dated 29.11.2019 was passed by dismissing the appeal of the assessee in limine without considering the written submissions filed by the assessee. We also note when the assessee pointed out that written submissions already filed before the ld. CIT(A), the ld CIT(A) simply reproduced the same in the order passed u/s 154 of the Act by recording two lines conclusions which is extracted below:

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“3. As such the submissions are taken on record. However, after considering such submissions, the adjudication of the order u/s 250 dated 29th November, 2019 remains unchanged.”

We observe that the Ld. CIT(A) has cryptic and non-speaking order without commenting on the contentions of the assessee as made in the written submissions filed by the assessee which is against the principal of natural justice and fair play. Accordingly we restore the appeal back to the file of the Ld. CIT(A) to decide the same by way of speaking order after affording reasonable opportunity of hearing to the assessee.

6. In the result, the appeal of the assessee is allowed for statistical purposes.

Order is pronounced in the open court on 4th January, 2023

Sd/-
(Sonjoy Sarma /संजय शर्मा)
Judicial Member/न्यायिक सदस्य

Sd/-
(Rajesh Kumar/राजेश कुमार)
Accountant Member/लेखा सदस्य

Dated: 4th January, 2023

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- M/s Powerplus Impex Pvt. Ltd., 53, N. S. Road, 2nd Floor, Kolkata-700001
2. Respondent – ITO, Ward-5(2), Kolkata
3. Ld. CIT(A)-10, Kolkata (Sent through e-mail)
4. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata