

**IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH 'C', KOLKATA**  
[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

**I.T.A. Nos. 440 & 441/Kol/2022**  
**Assessment Year : 2014-15 & 2015-16**

|  |    |                             |
|--|----|-----------------------------|
| M/s. S.R. Timber Products Pvt. Ltd.<br>PAN: AAGCS 3662 P | Vs | DCIT, Circle-13(2), Kolkata |
| Appellant  |    | Respondent                  |

|                       |                                  |
|-----------------------|----------------------------------|
| Date of Hearing       | 30.01.2023                       |
| Date of Pronouncement | 02.02.2023                       |
| For the Assessee      | Shri Siddharth Agarwal, Advocate |
| For the Revenue       | Shri Vijay Kumar, ACIT/DR        |

**ORDER**

**Per Shri Sonjoy Sarma, JM:**

The captioned appeals by the assessee are directed against the respective orders passed by the Id. CIT(A)-5, Kolkata dated 05.12.2018 and 06.05.2019 respectively pertaining to the A.Y. 2014-15 & 2015-16 which in turn have arisen from the order passed by the Id. AO u/s 144 of the I.T. Act dated 30.11.2016 & 26.12.2017 respectively.

2. From the note of the registry, it is come to our notice that both the appeals are time barred by 138 day. The Id. counsel for the assessee prayed for condonation of delay in filing the appeals by submitting two separate affidavits placed on record stating the reasons for such delay.

3. We after perusing the affidavits as well as the material available on record find that the order of the Id. CIT(A) are ex-parte orders. From the perusal of the affidavits, it is brought to our notice that the counsel did not appear before the authorities below and orders were passed against the assessee without any representation before the authorities below. Besides that the assessee came to know about the orders passed by the Id. CIT(A) from the office of the AO, in such a situation, there was delay on the part of the assessee filing the appeals before this Tribunal. We find merit in the contention made in affidavits given by the assessee and keeping the larger interest of

justice, we condone the delay and admit the appeals for adjudication. The assessee is in appeal before the Tribunal raising the following grounds in ITA No. 440/Kol/2022:

*“1. For that the ex-parte order passed by the Ld. CIT(A) is in gross violation of the principles of natural justice and as such, is not sustainable in law.*

*2. For that the Ld. CIT(A) was not justified in dismissing the appeal of the assessee without dealing with the merit of the additions made by the AO.*

*3. a) For that on the facts and in circumstances of the case, the Ld. CIT(A) was not justified in confirming the addition of Sundry Creditors amounting to Rs.32,36,48,683/- by wrongly invoking the provisions of section 68 of the Income Tax Act, 1961 without establishing the genuineness of the creditors. The AO did not doubt goods purchased by your appellant during the year. Hence the addition is arbitrarily illegal and bad in law.*

*b) For that on the facts and in circumstances of the case, and without prejudice to any other ground taken herein the Ld. CIT(A) was not justified in confirming the addition of loans and liability amounting to Rs.37,36,715/- by wrongly invoking the provisions of section 68 of the Income Tax Act, 1961 without establishing the genuineness is arbitrarily illegal and bad in law.*

*c) For that on the facts and in circumstances of the case, and without prejudice to any other ground taken herein the Ld. CIT(A) was not justified in confirming the disallowance of the entire amount of rents of Rs.6,27,242/, Repairs to plant & machinery of Rs.85,240/- and professional fees of Rs.3,16,438/- summing up to Rs.10,28,926/- by Wrongly invoking the provisions of section 40a(ia) of the Income Tax Act, 1961 without establishing the genuineness is arbitrarily illegal and bad in law.*

*d) For that on the facts and in circumstances of the case, and without prejudice to any other ground taken herein the Ld. CIT(A) was not justified in confirming the 50 percent disallowance of Wages & salary, bonus & allowances Rs.14,47,871/-, benefit to employees Rs.1,31,900/-, Staff welfare expenses Rs.2,33,094, Telephone expenses 2,33,094/- and other expenses Rs.10,36,60,606/- amounting Rs.5,18,30,303/- without invoking any provisions of any section of the Act is arbitrarily illegal and bad in law.*

*e) For that on the facts and in circumstances of the case, and without prejudice to any other ground taken herein the Ld. CIT(A) was not justified in confirming addition of Rs.33,15,843/- as statutory dues by the AO on basis of conjectures,*

*surmises and assumptions without invoking any provisions of any section of the Act is arbitrarily illegal and bad in law.*

*f) For that on the facts and in circumstances of the case, and without prejudice to any other ground taken herein the Ld. CIT(A) was not justified in confirming the disallowance of the entire amount of interest expense on working capital and labor finance of Rs.6,89,15,673/- on the basis of conjectures, surmises and assumptions without invoking any provisions of any section of the Act is arbitrarily illegal and bad in law.*

*g) For that on the facts and in circumstances of the case, and without prejudice to any other ground taken herein the Ld. CIT(A) was not justified in confirming the disallowance of the entire amount of transaction amount of Rs. 5,41,622/- through Americal Express Credit Card, treating it as unexplained cash credit on the basis of conjectures, surmises and assumptions and wrongly invoking provisions of section 68 of the Act is arbitrarily illegal and bad in law.*

*h) The appellant craves leave to add further grounds of appeal or amend, modify, rescind, supplement, alter any of the grounds stated hereinabove either before or at the time of hearing of this appeal.”*

5. At the outset, the ld. counsel for the assessee submitted that since the assessee did not get any opportunity to file relevant documents and to make submission before the ld. CIT(A). Since the order passed by the ld. CIT(A) was an ex-parte order, in such a situation one more opportunity should be given to the assessee in the interest of justice and issue raised in the instant appeal may be set aside to the file of ld. CIT(A) for fresh consideration. The ld. DR was fair enough not to oppose such prayer made by the ld. AR.

6. We, therefore, under the given facts and circumstances are of the considered view that since the order of ld. CIT(A) is an ex-parte order and no discussion has been made on the merits of the case. We, in the interest of justice, set aside the impugned order and remit back to the file of ld. CIT(A) for deciding all the issues raised before us by way of a speaking order. We also direct the assessee to remain vigilant for receiving the notices of hearing from ld. CIT(A) and should not request for any adjournment unless otherwise required for reasonable cause and should file all necessary documents so as to facilitate the ld. CIT(A) for passing the speaking

order. Needless to mention that the assessee should be given proper opportunity of being heard.

7. Since the facts & circumstances of the case are identical in ITA No. 441/Kol/2022 pertaining to A.Y. 2015-16. Our decision in ITA No. 440/Kol/2022 (supra) would, mutatis mutandis, apply to this appeal also. The appeal is allowed for statistical purpose.

8. In the result, both the appeals of the assessee are allowed for statistical purpose.

Order pronounced in the open court on 02.02.2023.

Sd/-

Sd/-

(Rajesh Kumar)  
Accountant Member

(Sonjoy Sarma)  
Judicial Member

Dated: 02.02.2023

*Biswajit, Sr. PS*

Copy of the order forwarded to:

1. Appellant- M/s. S.R. Timber Products Pvt. Ltd., Narayani Complex, 1<sup>st</sup> Floor, 268, G.T. Road, Liluah, Howrah-711204.
2. Respondent – DCIT, Circle-13(2), Kolkata.
3. Ld. CIT
4. Ld. CIT(A)
5. Ld. DR

True Copy

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata