IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "C", MUMBAI

BEFORE SHRI BASKARAN BR, ACCOUNTANT MEMBER
AND
SHRI KULDIP SINGH, JUDICIAL MEMBER

ITA No.2235/M/2022
Assessment Year: 2007-08

M/s. Permanent IP System, C/o Adv. Sunil Kadam, Chamber 4, Cosmos Trade Place, Ground Floor, Khatau Building, Alkesh Dinesh Mody Marg, Opp. BSE, Fort, Mumbai – 400 001 **PAN: AAIFP3095N**	Vs.	Income Tax Officer-19(2)(5), 108, 1st Floor, Matru Mandir, Tardeo, Grant Road, Mumbai – 400 007
(Appellant)		(Respondent)

Present for:
Assessee by : Ms. Sujata Malekar on behalf of Nishit Gandhi, A.R.

Revenue by : Ms. Anne Varghese, Sr. A.R.

Date of Hearing : 25 . 01 . 2023
Date of Pronouncement : 28 . 02 . 2023

O R D E R

Per : Kuldip Singh, Judicial Member:

The appellant, M/s. Permanent IP System (hereinafter referred to as 'the assessee') by filing the present appeal, sought to set aside the impugned order dated 04.11.2019 passed by Commissioner of Income Tax (Appeals), Mumbai [hereinafter

referred to as the CIT(A)] qua the assessment year 2007-08on the grounds inter-alia that :-

"1.1 In the facts and circumstances of the case and in law, Appellate order passed by the Learned Commissioner of Income Tax (Appeals) - 30. Mumbai ["the CIT (A)"] u/s 250 of the Income Tax Act, 1961 ["the Act" for short] as also the assessment order passed by the Learned Income Tax Officer - 15(1)(4). Mumbai ["the AO" for short] is bad in law and void since the same is:

(i) Passed in gross violation of principles of Natural Justice;
(ii) Without providing the Appellant with a fair and reasonable opportunity of being heard;
(iii) Relying on statements of some third parties without confronting the same to the Appellant and also without providing the Appellant an opportunity to cross-examine them despite specific requests; and
(iv) Basing his decision on irrelevant and extraneous considerations while ignoring the relevant and material considerations and evidences.

1.2 It is humbly prayed that the order so passed by the Ld. CIT(A) as also the Ld. AO be quashed.

ON JURISDICTION/REASSESSMENT:
2.1 In the facts and circumstances of the case and in law, the Ld. CIT(A) erred in confirming the action of the AO in framing a re-assessment u/s 147/148 of the Act without appreciating that:

(i) The necessary pre-conditions for initiation and completion of a re-assessment u/s 147/148 of the Act are not fulfilled in the present case;
(ii) The original assessment was completed u/s 143(3) of the Act in the present case and as such the present assessment is based on a mere change of opinion since the claim made by the Appellant u/s 80IC of the Act was duly verified in the original assessment and thereafter the order was passed; and
(iii) In any case, there was no failure on the part of the Assessee (the Appellant herein) to disclose fully and truly all the necessary facts for the purpose of the original assessment;

2.2 In the facts and circumstances of the case and in law, the assumption of jurisdiction by the AO for making the impugned re-assessment is bad in law and therefore the impugned re-assessment order is void and it is prayed that the same be quashed.

ON MERITS:
3.1 In the facts and circumstances of the case and in law the AO as well as the Ld. CIT(A) erred in denying the deduction u/s 80IC of the Act amounting to Rs.80.38,839/- as claimed by the Appellant in its return of income and also allowed in the original assessment

proceedings. 3.2 While denying the claim of the Appellant, the Ld. CIT(A) as well as the Ld. AO failed to appreciate that:

(i) The Appellant has complied with all the conditions as stipulated for the claim of deduction u/s 80IC of the Act;
(ii) The said claim has been allowed in the earlier year and the same has not been disturbed by the Department; and;
(iii) In any case the denial of exemption is not in accordance with law and hence unsustainable;

3.3. Without prejudice to the above, even otherwise the lower authorities grossly erred in denying the claim of deduction u/s 801C to the Appellant simply on the basis of unconfronted statements of some third parties without considering the fact that:

(i) The validity of the said statements is questionable;
(ii) The same are given after more than 7 years from the end of the relevant year before some other authority in a totally different proceeding;
(iii) The said statements as well as cross examination of the parties have not been provided to the Appellant despite requests;
(iv) In any case, the deduction u/s 80IC is dependent on fulfilment of the stipulated conditions as per the Act for the relevant year and not on statements of some third parties.

3.4 In the facts and circumstances of the case, it is prayed that deduction u/s 80IC of the Act as claimed by the Appellant and also allowed in the original assessment proceedings, be restored.

4. The appellant craves leave to add, amend, alter, modify or delete all or any of the grounds raised in the appeal."

2. Briefly stated facts necessary for consideration and adjudication of the issues at hand are: original return of income filed by the assessee declaring total income at Rs.Nil after claiming deduction under section 80IC of the Income Tax Act, 1961 (for short 'the Act') to the tune of Rs.80,38,839/- was subjected to scrutiny and assessment was framed under section 143(3) at the total income of Rs.1,16,53,070/- by disallowing the claim of refund of excise duty amounting to Rs.1,96,91,912/- and after allowing the deduction under section 80IC of the Act to the tune of

Rs.80,38,839/-. However, the said disallowance was deleted by the Ld. CIT(A) while deciding the appeal filed by the assessee.

3. Subsequently on the basis of information received from Dy. DIT (Inv.), Unit-3(2), Mumbai an open enquiry was conducted at the premises of the assessee, during which statement of one Mr. Raj Kishore Maniyar was recorded. An enquiry was also conducted by DGCEI Guwahati. From the enquiry it was noticed that the assessee has claimed to have made purchases of the main software, required for manufacturing of home automations, from M/s. Hanstec International Co. of Taiwan. It was also found during the enquiry inter-alia that M/s. Marctec International Co. and M/s. Hanstec International Co. from whom the assessee claimed to have made purchases of software, are only paper companies and do not develop any software on their own; that from the report given by Director General of Custom of Taiwan, Republic of China it is transpired that M/s. Hanstec International Co. purchased software from M/s. N.K. Electronics, Vashi, Navi Mumbai and sold it to M/s. Perfect Technologies and M/s. Permanent IP Systems. On the basis of these facts the assessment was reopened by initiating the proceedings under section 147/148 of the Act. Notices under section 143(2) and 142(1) of the Act were issued to which the assessee has duly responded. Declining the contentions raised by the assessee, the Assessing Officer (AO) proceeded to hold that the assessee was not having any requisite infrastructure and M/s. Hanstec International Co. was also not having any manufacturing activities of software and the software supplier M/s. N.K. Electronics, Vashi, Navi Mumbai have not supplied the software required for home automation to M/s. Phyllis Company during the

year under consideration and as such the assessee was found not engaged in any business activity and thereby disallowed the direct and indirect expenses claimed by the assessee. The AO also disallowed the deduction under section 80IC claimed by the assessee to the tune of Rs.80,38,839/- and thereby framed the assessment under section 143(3) read with section 147 of the Act at the total income of Rs.80,38,839/-.

4. The assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has dismissed the same. Feeling aggrieved with the impugned order passed by the Ld. CIT(A) the assessee has come up before the Tribunal by way of filing present appeal.

5. We have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

6. At the very outset, the Ld. A.R. for the assessee challenging the impugned order contended that the Ld. CIT(A) has not provided any opportunity of being heard to the assessee and thereby violated the principle of natural justice and that no notice has ever been received by the assessee company.

7. We have perused the impugned order passed by the Ld. CIT(A) wherein in para 4.1 it is recorded that notices dated 23.08.2016, 21.11.2016, 10.01.2017, 21.02.2017, 14.03.2017, 02.07.02017 and 17.09.2019 were issued to the assessee through

India Post and ITBA to provide an opportunity of being heard, but no compliance. However, complete facts have not been brought on record if the said notices issued by the office of Ld. CIT(A) were ever served upon the assessee. In these circumstances though the presumption of truth is attached to the facts recorded in para 4.1 of the impugned order by Ld. CIT(A) which are rebuttal one, but keeping in view the principle of natural justice that adequate opportunity of being heard is required to be given to the assessee, balance of convenience lies in favour of the assessee. Because when the assessee himself has filed the appeal being the aggrieved party it does not ordinarily appeal to the Bench that the assessee has not appeared despite service with any malafide intention. Because the assessee as an aggrieved party was ordinarily supposed to prosecute the appeal filed by him. Moreover, perusal of the impugned order passed by the Ld. CIT(A) shows that the appeal of the assessee has been dismissed because of non furnishing of documents, evidences or any written submissions.

8. In view of what has been discussed above, we are of the considered view that adequate opportunity is required to be given to the assessee and the Ld. A.Rs for the parties to the present appeal also agreed to this proposal that to decide the issue once for all adequate opportunity is required to be given to the assessee. So the impugned order passed by the Ld. CIT(A) is hereby set aside and the appeal of the assessee is remitted back to the Ld. CIT(A) to decide afresh after providing opportunity of being heard to the assessee.

9. Resultantly, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 28.02.2023.

Sd/-	**Sd/-**
(BASKARAN BR)	**(KULDIP SINGH)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai, Dated: 28.02.2023.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.