

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G" MUMBAI

BEFORE SHRI KULDIP SINGH (JUDICIAL MEMBER)
AND
SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)

ITA No. 173/MUM/2023
Assessment Year: 2017-18

S Amit Speciality Chemicals
Pvt. Ltd.,
105-A, Neelam Centre, Hind
Cycle Road, Worli,
Mumbai-400030.
PAN No. AAACB 1880 A
Appellant

Vs.

DCIT Circle-6(1)(1),
Room No. 501, 5th floor,
Aayakar Bhavan, M.K.
Road,
Mumbai-400020.
Respondent

Assessee by : Mr. Kumar Kale, Advocate
Revenue by : Mr. Milind S. Chavan, CIT-DR

Date of Hearing : 20/03/2023
Date of pronouncement : 31/03/2023

ORDER

PER OM PRAKASH KANT, AM

This appeal by the assessee is directed against order dated 29.11.2022 passed by the Ld. Commissioner of Income-tax – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment year 2017-18, raising following grounds:

1. On the fact and in the circumstances of the case, and also in law, the Ld. CIT(A) erred in passing the impugned order dated 29.11.2022 ex parte. Your appellant, therefore, prays



that the impugned order be quashed and the matter may be remanded back to the file of the Ld. CIT(A).

2. On the facts and in the circumstances of the case, and also in law, the Ld. CIT(A) erred in confirming the disallowance of Rs.20,85,691/- made by the Ld. AO u/s. 14A of the Act. Your appellant, therefore, prays that the aforesaid disallowance u/s. 14A may be restricted to such amount as may be warranted.

3. On the facts and in the circumstances of the case, and also in law, the Ld. CIT(A) erred in confirming the addition of Rs.20,85,691/- made by the Ld. AO while computing book profit u/s. 115JB being disallowance u/s. 14A of the Act. Your appellant, therefore, prays that the aforesaid addition of Rs.20,85,691/- be deleted from the book profit computed u/s. 115JB.

2. At the outset, the Ld. Counsel of the assessee submitted that the Ld CIT(A) has passed *ex-parte* order against the assessee, without taking into consideration written submission, information/documents etc on behalf of the assessee and therefore order of the Ld. CIT(A) might be restored back for deciding afresh and the assessee is willing to file all the necessary documents submissions in support of its claim.

3. We have heard rival submission of the parties on the issue-in-dispute and perused the relevant material on record. The relevant finding of the Ld. CIT(A) deciding the case *ex-parte* is reproduced as under:

“4. Findings:

In this case, Notice was issued on 18.01.2021 to the appellant to furnish written submissions and documents on or before 25.02.2021. It was specifically stated in the said notice that if no submissions/ information/ documents were received



within the stipulated time period, it would be presumed that the appellant had nothing to say in the matter and the department may proceed ahead based on material available on record. In view of the fact that no written submissions/ information/ documents were received from the appellant, nor any adjournment sought, another notice was issued on 10.12.2021 to the appellant to furnish written submissions, information and documents on or before 17.12.2021. It was specifically stated in the said notice that if no submissions/ information/ documents were received within the stipulated time period, it would be presumed that the appellant had nothing further to say in the matter and the appeal would be decided on merits on the basis of material available on record. No written submissions/ information/ documents were received, nor any adjournment sought. Accordingly, yet another notice was issued on 20.12.2021 to the appellant to furnish written submissions, information and documents on or before 27.12.2021. In view of the fact that no written submissions/ information/ documents have been received till date from the appellant nor any adjournment sought, appeal is being decided on the basis of material available on record.

Despite repeated notices as delineated above, the appellant has not seen it fit to file any submissions, information or documents during appeal proceedings. The only material on record in this case is Form 35 filed by appellant and copy of assessment order dated 30.11.2019 filed by the appellant along with Form 35. The material on record has been carefully perused.

There is no material on record to warrant interference in the order of the AO.

In view of the fact that there is no material on record to warrant interference in the order of the AO, the Grounds of Appeal are hereby dismissed.”

3.1 In view of the above, it is evident that despite notifying no written submission/documents from the assessee's side have been filed and thus appeal has been decided without considering the assessee's side by the Ld. CIT(A) and action of the Assessing officer



has been affirmed. Before us, the Ld. Counsel of the assessee has submitted that assessee could not respond to the notices issued by the Ld. CIT(A) , because not being familiar with the e-mail facility of correspondence. However, the assessee is now willing to file his written submission/documents before the Ld. CIT(A). In view of the facts and circumstances of the case and in interest of substantial justice, we feel it appropriate to restore the appeal back to the file of the Ld. CIT(A) for deciding afresh after considering the submission/documents on behalf of the assessee. Accordingly, the grounds of appeal raised by the assessee are allowed for statistical purposes.

4. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 31/03/2023.

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai;
Dated: 31/03/2023
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.



//True Copy//

BY ORDER,
(Assistant Registrar)
ITAT, Mumbai