

IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH 'A', KOLKATA

[Before Dr. Manish Borad, Accountant Member &
Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 280/Kol/2023
Assessment Year : 2013-14

Sheth Commercial Co.	Vs	ACIT, Circle-40, Kolkata
PAN: AAKFS 4209 H	.	
Appellant		Respondent

Date of Hearing	16.05.2023
Date of Pronouncement	13.06.2023
For the Assessee	Shri Miraj D. Shah, AR
For the Revenue	Smt. Ranu Biswas, Addl. CIT/DR

ORDER

Per Sonjoy Sarma, JM:

This appeal in ITA No. 280/Kol/2023 for A.Y. 2013-14 is preferred by the assessee against the order of the Commissioner of Income Tax, National Faceless Appeal Centre, Delhi (NFAC) [Ld. CIT in short], dated 20.02.2023. The assessee has raised the following grounds of appeal:

- 1. For that in the facts and circumstances of the case the Appellate order passed was in violation of principals of natural justice hence is bad in law and be quashed.*
- 2. For that in the facts and circumstances of the case the Appellate order passed was without providing proper opportunity of hearing to the assessee. The appellate order should be set aside as the same is bad in law.*
- 3. For that in the facts and circumstances of the case the Ld. Commissioner of Income Tax Appeals erred in passing an ex-parte order without considering the written submission filed on 04/12/2017. The action of the Ld. Commissioner of Income Tax Appeals is bad in law and the same should be quashed.*
- 4. For that in the facts and circumstance of the case Ld. Commissioner of Income Tax Appeals erred in upholding the disallowance of deduction claimed u/s 35(1) (ii) of the Income Tax Act 1961 of Rs.10,00,000. The disallowance is not called for hence the same be reversed.*

5. For that in the facts and circumstances of the case the Ld. Commissioner of Income Tax Appeals erred in upholding the disallowance of Rs.10,00,000 despite the confirmation from the party. Hence the disallowance be reversed.
6. For that the Ld. AO erred in disallowing the deduction of Rs.10,00,000 u/s 35(1)(i) of the Income Tax Act 1961 without making his independent inquiries, and merely relying on the report of the Investigation Department. The disallowance made on such basis is bad in law and therefore the same be reversed.
7. For that the facts and circumstances of the case the notice u/s 148 of the Income Tax Act 1961 was without jurisdiction and bad in law and hence the entire assessment order is bad in law and the same should be quashed.
8. For that the reopening of assessment u/s 148 of the Income Tax Act 1961 was bad in law and hence the reopening be declared to be bad in law and the reassessment order be quashed.
9. For that the reasons recorded before reopening of assessment u/s 148 of the Income Tax Act 1961 did not meet the test of law laid down by various courts and hence the reopening be declared to be bad in law and the reassessment order be quashed.
10. For that the reopening of assessment u/s 148 of the Income Tax Act 1961 was on borrowed satisfaction and not on any independent application of mind by the assessing officer and hence the reopening be declared to be bad in law and the reassessment order be quashed.
11. For that the reopening of assessment u/s 148 of the Income Tax Act 1961 was without any relevant material having link to escapement of income and hence the reopening be declared to be bad in law and the reassessment order be quashed.
12. For that the sanction u/s 151 of the IT Act 1961 before the reopening of assessment u/s 148 of the Income Tax Act 1961 was mechanical and without application of proper mind and the sanction was bad in law and hence the reopening be held to be bad in law.
13. For that in the facts and circumstances of the case the Learned Commissioner of Income Tax Appeals erred in upholding that the material based on which the Ld Assessment Officer passed the assessment order are collected behind the back of the assessee and which were not provided during

the course of assessment proceeding, thus material should be excluded/ignored for the purpose of this case.

14. For that in the facts and circumstances of the case the Learned Commissioner of Income Tax Appeals erred in upholding that the statement of third parties on which the Ld Assessment officer relied during the course of assessment proceeding were not subjected to cross examination for the assessee, thus the third party statement relied upon should be excluded/ignored for the purpose of this case.

15. For that the assessment order passed u/s 147/143(3) of the Income Tax Act, 1961 was without jurisdiction and hence the Ld CITA(A) erred in confirming the assessment order. The assessment order was bad in law and should be quashed.

16. For that the facts and circumstances of the case the notice u/s 143(2) of the IT Act 1961 was without jurisdiction and bad in law and hence the entire assessment order is bad in law and the same should be quashed.

17. The appellant craves leave to produce additional evidences in terms of Rule 29 of the Income Tax (Appellate Tribunal) Rules 1963.

18. For that the interest computed u/s 234 A/B/C/D of the IT act 1961 is over charged and wrongly calculated and or is not applicable to the assessee case hence the interest be deleted and or correctly computed.

19. The appellant craves leave to press new, additional grounds of appeal or modify, withdraw any of the above grounds at the time of hearing of the appeal.”

2. Though the assessee has raised multiple grounds of appeal contesting various disallowances and additions made by the AO and which was sustained by the ld. CIT(A) in his ex-parte order passed against the assessee. We find that the assessee has raised a primary ground that the ld. CIT(A) has passed an ex-parte order without furnishing proper notice to the assessee and due to this reason, assessee did not get sufficient opportunity to submit necessary submission before the ld. CIT(A). The ld. AR for the assessee to substantiate its claim, he submitted a copy of

affidavit dated 15.05.2023 which was duly sworn before the competent authority stating that appeal of hearing for the assessment year in question against the order passed u/s 147, 143(3) dated 06.07.2016 was fixed before the Hon'ble CIT(A), NFAC and no notice was received by the assessee from the ends of ld. CIT(A) on the last date of hearing i.e. 28.10.2022 and due to this reason, assessee could not get any information about the hearing of the case and for this reason the ex-parte order was passed against the assessee.

3. We after perusal of the said affidavit, we find that the assessee did not get any information regarding the hearing from the ends of ld. CIT(A) and due to this reason, the order was passed ex-parte against the assessee. The ld. AR before us prayed that one more opportunity may be given before the ld. CIT(A) to contest its case. He further contended that assessee will not take any adjournment before the ld. CIT(A) and would co-operate in the appeal. We find that the impugned ex-parte order has been passed by the ld. CIT(A) without considering the written submission filed by the assessee on 04.12.2017. Due to this, the action of the ld. CIT(A) is bad in law and it is a fit case for remanding the appeal before ld. CIT(A) to give one more opportunity to the assessee to represent its case properly. In the mean time, we also direct the assessee to cooperate with expeditious disposal of the matter by the ld. CIT(A) by not seeking any further adjournment except due to exceptional or unavoidable circumstances. In view of the above discussion, the

various grounds raised by the assessee on merits are left open and remand back to the file of ld. CIT(A) for de novo adjudication.

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

Order pronounced in the open court on 13.06.2023.

Sd/-

Sd/-

(Manish Borad)
Accountant Member

(Sonjoy Sarma)
Judicial Member

Dated: 13.06.2023
Biswajit, Sr. PS

Copy of the order forwarded to:

1. Appellant- Sheth Commercial Co., 61, Bentick Street, Kolkata-700069.
2. Respondent – ACIT, Circle-40, Kolkata.
3. Ld. CIT
4. Ld. CIT(A)
5. Ld. DR

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata