

**THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F', NEW DELHI**

Before Dr. B. R. R. Kumar, Accountant Member

Sh. Yogesh Kumar US, Judicial Member

ITA No. 84/Del/2020 : Asstt. Year: 2011-12

PSA Nitrogen Ltd., E-1, LGF, Lajpat Nagar-III, New Delhi-110024 (APPELLANT)	Vs.	Income Tax Officer, Ward-19(2), New Delhi (RESPONDENT)
PAN No. AAACP0953G		

**Assessee by : Sh. Devesh K. Malan, Adv.
Revenue by : Ms. Indu Bala Saini, Sr. DR**

Date of Hearing: 14.06.2023

Date of Pronouncement: 20.06.2023

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of Id. CIT(A)-22, New Delhi dated 30.10.2019.

2. Following grounds have been raised by the assessee:

A. BECAUSE the Ld. Commissioner of Income Tax (Appeals) has failed to observe that the proceedings initiated under the provision of Income Tax Act, 1961 before the Assessing Officer was time barred as the notice of the Assessment was served upon the Assessee Company through post in the month of April 2018 only (after expiry period allowed for such proceedings). The Assessing Officer supposedly sent an unsigned/non-original notice on email and that also on the very last day around midnight just a few minutes before that, i.e. a long time after working hours. The Proceedings initiated by the Ld. Assessing Officer were times barred and against the Principles of natural justice.

Reliance is placed on the case of B. Johar Forest Works v. CIT, 107 ITR 409 (J&K), wherein which the Hon'ble Court has held that "mere knowledge of notice is not equivalent to proper service."

Further reliance is placed on CIT V. Dey Brothers 3 ITR 213 (Ray) Wherein which the Hon'ble Court has held that "the mere fact that the notice had in some way or other reached the person upon whom it was to be served was not sufficient to comply with a requirement of proper service of notice."

B. BECAUSE the Ld. Commissioner of Income Tax (Appeals) has failed to appreciate the intention of the Legislature which is to prevent or check evasion of income tax and promote the filing of returns on income under the IT Act and not to burden the Company by penalizing for lacuna only which is beyond the power of anybody by imposing the heavy penalty upon the Appellant.

C. BECAUSE the Ld. Commissioner of Income Tax (Appeals) has failed to appreciate that the Appellant had already filed the returns for AY 2011-12 on income of Rs. 28,53,730/- which is genuine and real, nothing has been concealed therefrom.

D. BECAUSE the Ld. Commissioner of Income Tax (Appeals) is not justified in treating the payment made by M/s Lalit Enterprises as Appellant's income on plea that the proprietor of the M/s Lalit Enterprises Shri Deep Chand Kaushik was not produced before him, even after a confirmation from the Appellant that said person is no more and died.

E. BECAUSE the Ld. Commissioner of Income Tax (Appeals) has erred in law by failing to appreciate that it was not the duty of the Appellant to produce the proprietor of M/s Lalit Enterprises before him and further failed to observe that onus of producing the said alleged person also never lied upon the appellant.

F. BECAUSE the Ld. Commissioner of Income Tax (Appeals) has failed to appreciate that the Appellant had produced the Bank Statements and Ledger Accounts before the Ld. Assessing Officer highlighting that the Amount of Rs. 26,00,000/- were paid by M/s Lalit Enterprises as advance on account of work order and on account of cancelling of the project, the said amount was returned back by the appellant to the M/s Lalit Enterprises.

G. BECAUSE the Ld. Commissioner of Income Tax (Appeals) has wrongly observed that there was non-compliance on part of appellant or its main counsel, but in fact appellant or its main counsel were always present and due progress was made on every date.

H. BECAUSE the Ld. Commissioner of Income Tax (Appeals) has failed to appreciate that the Appellant did not get sufficient reasonable opportunity for making a representation as he hastily proceeded to conclude the proceeding on 29.10.2019, when the main counsel was out of town on account of the festival of Bhai Dooj, and despite the Ld. Commissioner of Income Tax (Appeals) having assured the main counsel that he could appear a few days post Bhai Dooj, then not heeding to the main counsel when he even appeared between 29.10.2019 and 1.11.2019 after which order was finally passed by the Ld. Commissioner of Income Tax (Appeals).

I. BECAUSE on the facts and in circumstances of the case, the Ld. Commissioner of Income Tax (Appeals) has failed to appreciate the prevailing circumstances in the business of the appellant company where such type of transactions and advances are normal in nature and being carried out in its usual course of business, and it cannot be claimed on mere allegation of bogus billing on part of Lalit Enterprises, it cannot be held that the appellant company has engaged in the same - in fact, there has not even been any billing because the advance was returned back to Lalit Enterprises. Thus,

the impugned order of the Ld. Assessing Officer is erroneous on facts and in law.

J. BECAUSE the Ld. Commissioner of Income Tax (Appeals) has failed to appreciate that no benefit has been received by the appellant company which simply received money by way of advance in one assessment year and returned the same money back in the next assessment year - and the appellant company has not treated the return of money in next year as loss and thereby not reduced its income tax liability, hence there is no reason to treat the receipt of money in first assessment year as income to create an income tax liability.

K. BECAUSE the Appellant never admitted that notice u/s 148 was served upon it on 31/3/2018, it only said that the AO claims that he supposedly emailed this notice on 31/3/2018 close to midnight - and that notice was received by post in the month of April 2018 only which is time barred.

L. BECAUSE the staff of the Ld. Commissioner of Income Tax (Appeals) has wrongfully declined to provide the certified copy of the documents submitted during the pendency of appeal.

M. BECAUSE the impugned order dated 30.10.2019 passed by the Ld. Commissioner of Income Tax (Appeals) is otherwise also erroneous, unsustainable and bad in law."

3. In this case, the assessee received an amount of Rs.22,00,000/- on 16.03.2011 and Rs.4,00,000/- 21.03.2011 from one entity namely M/s Lalit Enterprises and the same have been repaid on various dates from 11.08.2011 of Rs.5,50,000, 12.08.2011 of Rs.5,50,000/-, 24.09.2011 of Rs.5,00,000/-, 12.10.2011 of Rs.5,00,000/- & 14.10.2011 of Rs.5,00,000/-.

4. We find that the addition has been made owing to failure of the assessee to produce the proprietor of M/s Lalit Enterprises during the assessment proceedings. On going through the record, we find absolute lack of any evidence brought by the revenue to treat the same under the provisions of Section 68 of the Income Tax Act, 1961.

5. In the result, the appeal of the assessee is allowed.

Order Pronounced in the Open Court on 20/06/2023.

Sd/-

(Yogesh Kumar US)
Judicial Member

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

Dated: 20/06/2023

Subodh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR