

IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT
(Conducted Through Virtual Court)

**Before: Shri Waseem Ahmed, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA Nos. 44 to 46/Rjt/2018
Assessment Years: 2011-12 & 2013-14**

M/s. Champion Agro Ltd. Plot No. 2, Survey No. 217, National Highway 8B, Veraval (Shapar) PAN No: ABKAS7942R (Appellant)	Vs	The DCIT, Circle-1(1), Rajkot (Respondent)
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**Assessee Represented: None
Revenue Represented: Shri Shramdeep Sinha, CIT-DR**

Date of hearing : 06-07-2023
Date of pronouncement : 07-07-2023

आदेश/ORDER

PER BENCH:-

These three appeals are filed by the assessee as against separate exparte orders all dated 29-11-2017 passed by Commissioner of Income-Tax (Appeals)-1, Rajkot arising out of the exparte assessment order passed under section 144 and u/s. 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Years (A.Ys) 2011-12 & 2013-14.

2. The brief facts of the case is that the assessee is a Company engaged in the business of trading of agricultural inputs, agro commodity, agricultural farming & manufacture of pumps, etc. For the Assessment Year 2011-12, the assessee filed its Return of Income declaring total income of Rs. 29,04,30,420/-. There was a survey action u/s. 133A in the business premises of the assessee and the assessee disclosed an additional income of Rs. 12,50,00,000/- on account of unsubstantiated purchase bills and unaccounted debtors.

2.1. During the course of assessment proceedings, the assessee was issued with the questionnaire dated 16.09.2013 seeking various details. The assessee filed a reply on 17-12-2013, in order to verify the correctness and authenticity of the details, the assessee was asked to furnish books of account along with the purchase and sales bills. The assessee was given further six opportunities to produce the details, however the assessee failed to comply with the above notices but on 28-03-2014 at the fag end of the assessment period, a letter was filed by the assessee without any documentary evidences and books of accounts. Therefore with the available materials on record, the Assessing Officer passed an exparte assessment order making disallowance of Rs. 4,87,138/- on account of late payment of ESI & PF contribution and addition of Rs. 6,53,52,410/- estimation of net profit higher by 2% and demanded tax thereon.

3. Aggrieved against the exparte order, the assessee filed an appeal before Commissioner of Income Tax (Appeals). The Ld. CIT(A) given

seven opportunities of hearing and thereafter dismissed the appeal for non-prosecution observing as follows:

“...4. Non prosecution of appeal:

During the appeal proceedings, various notices were issued to the assessee as under:

In view of above, the appeal is liable to be dismissed for non-prosecution. In this regard I also find that the assessee has been non cooperative during assessment proceedings as well and the assessment had to be passed u/s 144 by the AO as most of the notices of AO were not complied with.

I find that the assessee has been largely non-compliant during assessment, and has not responded to the notices of hearing of appeal. The only inference that can be drawn is that the assessee does not wish to pursue the appeal.

In the case of CIT Vs. B.N. Bhattachargee & Another 118 ITR 461 (relevant pages 477 &. 478) wherein their Lordships have held that "the appeal does not mean merely filing of appeal but effectively pursuing it."

In the case of Estate of Late Tukoji Rao Holker Vs. CWT 223 IR 480 (MP) while, dismissing the reference made at the instance of assessee in default made following observations in their order.

"if the partly at whose instance the reference is made falls to appear at the hearing, or fails in taking steps for preparation of the paper books so as to enable hearing of the reference, this court is not bound to answer the reference."

In the case of CIT Vs. Multiplan India Pvt. Ltd. 38 ITD 320 (Del) the appeal filed by the revenue before the Tribunal which was fixed hearing but on the date of hearing nobody represented the revenue applicant, nor any communication for adjournment received. There was no communication or information as to why revenue choose to remain absent on that date. The Tribunal on the basis of inherent power treated the appeal filed by the revenue as un-admitted in view of Rule 19 of the Appellate Tribunal Rules, 1963."

In view of the above, the appeal is liable to be dismissed for non-prosecution."

3.1. Even on merits, late payment of ESI & PF Contribution, the Ld. CIT(A) following the Hon'ble Gujarat High Court Judgment in the

case of Gujarat State Road Transport Corporation Ltd. held that the disallowance was correct in law and thereby dismissed the ground. On the estimation of net profit of 2% higher profit, in the absence of any books of account or bills or vouchers for verification, the same could not be verifiable and also non-cooperation of the assessee. Thus the Ld. CIT(A) rejected this ground also and thereby dismissed the appeal filed by the assessee.

4. Aggrieved against the exparte order, the assessee is in appeal before us raising the following Grounds of Appeal:

1. The Commissioner of Income Tax [Appeals] erred in upholding the order under section 144 of the Act. The upholding of the exparte order is not justified.

2. Without prejudice to ground no 1, The Commissioner of Income Tax [Appeals] erred in upholding that the agricultural income was to be taxed as income from other sources.

3. Without prejudice to ground no 1, The Commissioner of Income Tax [Appeals] erred in upholding an addition of Rs.21,32,85,956/- as income from other sources.

4. Without prejudice to ground no 1, The Commissioner of Income Tax [Appeals] erred in upholding an addition of Rs 4,87,138/- under the provisions of section 36(1)(va).

5. Without prejudice to ground no 1, The Commissioner of Income Tax [Appeals] erred in upholding the rejection of the book result. The rejection of the book result is not justified.

6. Without prejudice to ground no 1 and 5, The Commissioner of Income Tax [Appeals] erred in upholding an addition of Rs 6,53,52,410/-.

4.1. Today is the 5th time of hearing of the above appeal, None appeared on behalf of the assessee in spite of service of notices. Even on the previous hearing on 30-03-2023, Ld. Counsel Shri R.D. Lalchandani has withdrawn his Vakalath as he is not able to contact the assessee. Thereafter the appeal was adjourned to 29-05-2023 and today 06-07-2023. On 29-05-2023 wherein the Department was directed to serve the notice, however None

appeared on behalf of the assessee today. This clearly shows that the assessee is not interested in conducting the above appeals. So with the available materials on record, we proceed with the appeals.

4.2. Ld. CIT-DR Shri Shramdeep Sinha appearing for the Revenue submitted both before the Assessment order as well as Appellate order were exparte orders, the assessee failed to file any material evidence before the Lower Authorities. Thus the Ld. CIT-DR submitted that it is squarely covered by the Hon'ble High Court of Gujarat in the case of PCIT Vs. Ashokji Chanduji Thakor in Tax Appeal No. 1160 & 1161 of 2018 dated 09-10-2018, wherein the Hon'ble High Court after considering the Tax Appeal No. 710 of 2018 dated 2-06-2018 set aside the order passed by the Tribunal and restored the exparte appellate order and assessment order. Following the above Jurisdictional High Court judgment, the exparte orders passed by the Ld. CIT(A) and Assessing Officer does not require any interference and the present appeals filed by the assessee are liable to be dismissed.

5. We have given our thoughtful consideration and perused the materials available on record. It is seen from the assessment records, the assessee has not responded to the various notices and not filed relevant documents or materials before the Assessing officer. Therefore the Assessing officer passed an exparte order u/s. 144 of the Act. Even before the Ld. CIT(A), seven opportunities of hearing were given to the assessee from 22-01-2021 till 18-08-2022, the assessee neither filed written submissions nor requested for any adjournment of the hearings. Therefore the Ld. CIT(A)

passed an ex parte appellate order, confirming the disallowance made u/s. 36(1)(va) of the Act and estimation of turnover in the absence of material evidences. We do not find any infirmity in the order passed by the Ld. CIT(A) on merits. Though the assessee has not availed as many opportunities given by the Ld. Assessing Officer and Ld. CIT(A) but failed appear, but very promptly filed statutory appeals within time, which clearly shows the malafide intention of the assessee.

5.1. Further the Jurisdictional High Court in the case of Ashokji Chanduji Thakor (cited supra) held as follows:

...Both these appeals are filed by the Revenue. Revenue has challenged the judgment of the Income Tax Appellate Tribunal, Ahmedabad [Tribunal for short dated 27th December 2017 by which the Tribunal was pleased to remand the proceedings before the CIT(A) for fresh adjudication. The Tribunal noted that despite service of notices, before CIT(A) no one appeared on behalf of the assesses. No written response was also made. Despite this, the Tribunal placed the matter back before the Ld. CIT(A) for fresh consideration.

We may noticed that in case of the group of assessees, this Court in Tax Appeal No. 710 of 2018 and connected appeals, by judgment dated 27th June 2018 had reversed such a view of the Tribunal. The Court was of the opinion that the Tribunal had exercised its discretion without stating reasons.

Eventually, the Court made the following observations:

"8.0. It is required to be noted that in the present case right from very begging i.e. assessment proceeding, assessee was non cooperative. Number of opportunities were given by the AO, however assessee did not cooperate and even did not file any reply. Therefore, considering the material on record, the AO made addition as unexplained investment. Even before the learned CIT(A) also the assessee was non cooperative. Number of opportunities were given to the assessee to represent his case, however none remained present on behalf of assessee. Thereafter, the learned CIT(A) proceeded further with the appeal ex parte and decided the appeal on merits and confirmed the order passed by the AO confirming additions of unexplained investment. Thus, even learned CIT(A) also decided the matter on merits. On going through the orders passed by the AO as well as learned CIT(A), we are of the opinion that in absence of any explanation by the assessee on the investment in question, AO was justified in making the addition of unexplained investment and thereafter learned CIT(A) was justified in confirming the same. Therefore, even the order passed by the learned CIT(A) which was on merits was not required to be interfered with

by the learned CIT(A) and ought not to have been quashed and set aside without assigning any reasons. Under the circumstances, the impugned orders passed by the learned Tribunal cannot be sustained.

9.0. In view of the above and for the reasons stated above, the questions of law are answered in favour of the Revenue and against the assessee and impugned common judgment and order passed by the learned Tribunal in IT(SSJA No.117/AHD/2015 to IT(SSIA No.122/AHD/2015 is hereby quashed and set aside and the orders passed by the AO as well as learned CIT(A) are restored. All the appeals are allowed accordingly. No costs."

In the result, these Tax Appeals are also allowed.

Impugned common order of the Tribunal is set aside."

6. Respectfully following the above judgment of the Jurisdictional High Court, we have no other option than to dismiss the appeal filed by the assessee.

7. In the result, the appeal filed by the Assessee in ITA No. 44/Rjt/2018 is hereby dismissed.

ITA No. 45/RJT/2018 for Assessment Year 2013-14

8. The Grounds of Appeal raised by the assessee reads as under:

1. The Commissioner of Income Tax [Appeals] erred in upholding the order under section 144 of the Act. The upholding of the ex parte order is not justified.

2. Without prejudice to ground no 1, The Commissioner of Income Tax [Appeals] erred in upholding that the agricultural income was to be taxed as income from other sources.

3. Without prejudice to ground no 1, The Commissioner of Income Tax [Appeals] erred in upholding an addition of Rs 1,50,01,38,918/- as income from other sources.

4. Without prejudice to ground no 1, The Commissioner of Income Tax [Appeals] erred in upholding an addition of Rs 6,36,31,076/- under the provisions of section 68 of the Act.

9. Here the disallowance made by the Assessing Officer on two counts namely exempt Agricultural income treated as income from

other sources and addition on account of unexplained/unsecured loans. In this case also, the assessee before the Assessing Officer in spite of seven notices was not responded and not furnished any details. During the appeal before the Ld. CIT(A), there was a delay of 236 days which was condoned by the Ld. CIT(A). However the assessee has not appeared for the hearing of the appeals and also not filed any details, thereby the Ld. CIT(A) dismissed the appeal for non-prosecution. We don't find any good reason/ground to interfere with the orders passed by the lower authorities. **ITA No. 46/RJT/2018** is against levy of penalty u/s. 271(1)(c) of the Act. For the detailed reasons stated in ITA No. 44/Rjt/2018 at Paragraphs 5 & 6 of this order hereinabove. Therefore these appeals filed by the assessee are also hereby dismissed.

10. In the result, all the three appeals filed by the Assessee are hereby dismissed.

Order pronounced in the open court on 07-07-2023

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER True Copy
Ahmedabad : Dated 07/07/2023

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलिय अधिकरण,
राजकोट