

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN**

Before Shri Sanjay Arora, Accountant Member and
Shri Manomohan Das, Judicial Member

ITA No. 21/Coch/2023
(Assessment Year: 2014-15)

High Range Foods Pvt. Ltd.
28/3030, Cheruparambath Road
Kadavanthra, Kochi 682020
[PAN:AAACH6076L]

Vs.

Asst. CIT,
Corporate Circle-1(2)
Kochi

(Appellant)

(Respondent)

Appellant by: Shri Veeramani, CA
Respondent by: Smt. J.M. Jamuna Devi, Sr. D.R.

Date of Hearing: 11.07.2023
Date of Pronouncement: 31.07.2023

ORDER

Per: Sanjay Arora, AM

This is an Appeal by Assessee agitating the appellate order under section 250 of the Income Tax Act, 1961 (the Act) dated 17.11.2022, dismissing the assessee's appeal contesting its assessment u/s.143(3) of the Act dated 07.11.2016 for Assessment Year (AY) 2014-15.

2. At the outset, it was submitted by Shri Veeramani, the learned counsel for the assessee, that the assessee's appeal before the first appellate authority (i.e., NFAC, Delhi) against its assessment for AY 2014-15, stands in fact disposed of, adverting to a copy of the order dated 21.11.2021 by it in the assessee's case for AY 2014-15. Rather, appeal there-against stands also since disposed of by the Tribunal on 04.08.2022 (in ITA No. 64/Coch/2022), copy of which again stands appended in its paper-book (APB pgs. 10-16). At this stage, it was brought to his notice by the Bench that the impugned order is in

respect of a different appeal (i.e., CIT(A), Kochi-1-10616/2016-17), instituted on 21.12.2016 and, further, arising from the order u/s. 143(3) of the Act dated 07.11.2016. The appellate order dated 21.11.2021 was in respect of Appeal No. CIT(A), Kochi-1-10283/2016-17, instituted on 19/12/2016 against order u/s. 143(3) dated 30/11/2016. Did the assessee file two appeals against the same order, i.e., even assuming a single assessment? He could not furnish any satisfactory answer. This is surprising as the appeal before the first appellate authority is filed only by the assessee. Further, how could there be two assessment orders, i.e., dated 07.11.2016 (not on record) and 30.11.2016 (which shows the last date of hearing before the Assessing Officer (Corporate Circle 1(2), Kochi) as 07.11.2016) in respect of same proceedings? Smt. Devi, the Id. Sr. DR, also could not throw any light in the matter.

3. The question before us therefore is if the impugned order is a valid order and, thus, maintainable in law, or not? The answer, in the peculiar facts of the case, in our opinion, lies with the assessee, at whose behest the appeals are filed against the assessment order and the appellate proceedings initiated. Both, the existence of two assessment orders, as also the filing of two appeals, which entails a fee, is bewildering in the least. The presumption in law, though rebuttable, is that all official acts are regularly performed? In fact, we observe that the impugned order, as indeed that dated 22.11.2021, address the same grounds raised by the assessee per its memorandum of appeal (Form 35).

4. Under the circumstances, we only consider it proper that the appeal is restored back to the file of the first appellate authority, who shall issue definite findings on:

(a) if the instant appeal, instituted before it on 21.12.2016, is maintainable in view of the appeal instituted on 19.12.2016, since disposed of by it on 22.11.2021;

(b) where so, decide the issue arising out of the assessment dated 07.11.2016, i.e., to the extent not already decided per the impugned order, after allowing the assessee an opportunity to represent its case before it. Needless to add, it shall do so in accordance with law and by issuing definite findings of fact. The burden to prove it's claims, would though be on the assessee.

We decide accordingly.

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

Order pronounced on 31st July, 2023 under Rule 34 of The Income Tax(Appellate Tribunal) Rules, 1963.

Sd/-
(Manomohan Das)
Judicial Member

Sd/-
(Sanjay Arora)
Accountant Member

Cochin, Dated: July31, 2023

Copy to:

1. The Appellant
2. The Respondent
3. The CIT concerned
4. The DR, ITAT, Cochin
5. Guard File

By Order

Assistant Registrar,ITAT, Cochin

n.p.