

आयकर अपीलिय अधिकरण, कोलकाता पीठ 'ए', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH: KOLKATA
श्री राजेश कुमार, लेखा सदस्य एवं श्री संजय शर्मा न्यायिक सदस्य के समक्ष
[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 349/Kol/2022
Assessment Year : 2013-14

ACIT, Central Circle-2(2), Kolkata	Vs.	M/s Conclave Dealers Pvt. Ltd. (PAN: AADCC 8908 R)
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	20.03.2023
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	31.07.2023
For the Appellant/ निर्धारिती की ओर से	None
For the Respondent/ राजस्व की ओर से	Shri Subhrajyoti Bhattacharjee, CITDR

ORDER / आदेश

Per Shri Rajesh Kumar, AM:

This is the appeal preferred by the revenue against the order of the Ld. Commissioner of Income Tax (Appeals)- 20, Kolkata [hereinafter referred to as 'Ld. CIT(A)'] dated 29.10.2021 for the assessment year 2013-14.

2. Though the Registry has pointed out that the appeal is time barred by 160 days, however, in view of the decision of the Hon'ble Supreme Court in the case of Miscellaneous Application No. 665 of 2021 in SMW(C) No. 3 of 2020, the period of filing appeal during the COVID-19 pandemic is to be excluded for the purpose of counting the limitation period. In view of this, the appeal is treated as filed within the

limitation period. We find that there was no delay in filing the appeal as per the Hon'ble Supreme Court's order (supra), therefore the appeal is taken for adjudication.

3. At the time of hearing, when the case was called upon neither the assessee nor the A.R of the assessee appeared before us to attend the hearing nor any adjournment application was moved. We note from the order sheet that the case of the assessee has been fixed for hearing on several occasions namely 7.11.2022, 12.12.2022, 12.01.2023, 13.02.2023 and finally on 20.03.2023 but on all the occasions neither the assessee nor his authorized representative attended the hearings. Under the circumstances we have no option but to decide the appeal after hearing the Ld. D.R. On 12.01.2023 the Bench has directed the service of notice through the revenue. The AO/DCIT, CC-2(2), Kolkata informed the Bench vide letter dated 02.02.2023 that Mr.. Pratima Tudu was directed to serve the notice on 19.01.2023. However when Mr. Pratima Tudu went to deliver the notice on 19.01.2023 on the address mentioned above, there was no trace of the office mentioned in the notice. Again Shri Amit Kumar Nayak, Inspector of Income Tax attached this charge has been directed to serve the notice on 20.01.2023 and submit a report. The Inspector submitted that notices have been emailed on 24.01.2023 on the address available in the return of income filed by the assessee on 20.01.2023 but despite that no one turned up for today's hearing. Therefore they are deciding the appeal on the back of the assessee after hearing he ld DR and after perusing the merits.

4. We have perused the assessment order as well as appellate order and find that before both the authorities , the case was not represented and thus the AO as well as Ld. CIT(A) decided the case of the assessee on the basis of facts available on record. We have perused the appellate order and found that both the authorities have recorded a findings that the sales and purchases of the assessee were bogus however the Ld. CIT(A) partly allowed the appeal of the assessee by holding that in the group concern the AO has applied GP @ 5% and thereby directing the AO to make addition of Rs. 2,87,94,998/- on the total turnover/sales which worked out to 5%. In our view, the action of the Ld. CIT(A) is excessively liberal and lenient in directing the to apply the

GP rate of 5%. We note that in case of bogus sale and purchases the various judicial forms have held that GP of 12.50 is reasonable and justified. Accordingly we modify the order of ld CIT(A) and direct the AO to apply GP @ 12.5% in place of 5%. Accordingly the appeal of the revenue is partly allowed.

5. In the result, appeal of the revenue is partly allowed.

Order is pronounced in the open court on 31st July, 2023

Sd/-
 (Sonjoy Sarma /संजय शर्मा)
 Judicial Member/न्यायिक सदस्य

Sd/-
 (Rajesh Kumar/राजेश कुमार)
 Accountant Member/लेखा सदस्य

Dated: 31st July, 2023

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- ACIT, Central Circle-2(2), Kolkata
2. Respondent – M/s Conclave Dealers Pvt. Ltd. , 238, C.R. Avenue, Ground Floor, Kolkata-7000006
3. Ld. CIT(A)- 20, Kolkata
4. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
 ITAT, Kolkata Benches, Kolkata