

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'एसएमसी', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH KOLKATA

श्री संजय गर्ग, न्यायिक सदस्य एवं श्री मनीष बोरड, लेखा सदस्य के समक्ष
Before Shri Sanjay Garg, Judicial Member and Dr. Manish Borad, Accountant Member

I.T.A No.613/Kol/2023
Assessment year: 2014-15

Jayanti Sahoo..... Appellant
40C, Chitta Ranjan Avenue,
Kolkata-700012
[PAN: BSMPS2371F]

vs.

ITO, Ward-37(2), Kolkata..... Respondent

Appearances by:

Shri Miraj D. Shah, AR, appeared on behalf of the appellant.

Shri Anindya Kumar Bandopadhyay, Addl. CIT- DR, appeared on behalf of the Respondent.

Date of concluding the hearing : August 03, 2023

Date of pronouncing the order : September 04, 2023

आदेश / ORDER

मनीष बोरड, लेखा सदस्य द्वारा / Per Manish Borad, Accountant Member:

This appeal is at the instance of the assessee pertaining to the Assessment Year (in short "A.Y") 2014-15 is directed against the order of the National Faceless Appeal Centre [in short ld. "CIT(A)"] dated 28.04.2023 which is arising out of the order u/s 143(3) of the Assessing Officer dated 05.08.2016.

2. The assessee in this appeal has taken 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 circumstance of the case Ld. Commissioner of Income Tax Appeals erred in upholding and confirming the addition of Rs.44,56,894 on account of considering the purchase transaction with M/s Madhu Enterprise as bogus sundry creditor. The addition is not called for hence the same be reversed.

4. For that in the facts and circumstance of the case Ld. Commissioner of Income Tax Appeals erred in upholding and confirming the addition of Rs.1,56,585 on account of considering the purchase transaction with M/s Bhagabati Plywood as bogus sundry creditor. The addition is not called for hence the same be reversed.

5. 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.

6. 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.

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

8. For that the facts and circumstances of the case 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.

9. 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.”

3. At the outset, the ld. counsel for the assessee submitted the impugned order is ex parte and the assessee failed to appear on the given date of hearing which mainly fell during the period of Covid-19

restriction, therefore, prayer was made to restore the issue raised on merit regarding the addition towards bogus sundry creditors at Rs.46,13,479/- and addition on account of under-valuation of work-in-progress at Rs.38,302/- to the file of the ld. CIT(A) for necessary adjudication.

4. On the other hand, the ld. Departmental Representative failed enough not to oppose the request of the ld. counsel for the assessee and restore the issue on merits to the ld. CIT(A).

5. We have heard rival contentions and perused the records placed before us. We notice that the assessee is an individual and is a contractor. Income of Rs.29,813/- declared in the e-return filed on 12.03.2015 for assessment year 2014-15. The assessee's case was selected for scrutiny under CASS for the reason of "*large increase in sundry creditors against the reduction in business income as compared to preceding year and receipts u/s 194C and 194J(as per 26AS) are more than the receipts shown in ITR 4/5/6*". We notice that assessment proceedings were carried out and ld. Assessing Officer concluded the same making addition towards bogus sundry creditors at Rs.46,13,479/- and under-valuation of work-in-progress at Rs.38,302/-.

6. We further notice that the assessee carried the matter challenging the said addition before the ld. CIT(A) but failed to appear on seven occasions and ld. CIT(A) was left with no option except to proceed ex parte. However, since the assessee failed to file any written submission and appear before the ld. CIT(A), the addition made by the ld. Assessing Officer was confirmed. We notice that the dates of

hearing are mainly between 23.03.2021 to 06.12.2021 during which the country was passing through Covid-19 pandemic and there were various restrictions which can be sufficient reason for the non-compliance on the part of the assessee. Considering the same and also in the interests of justice and being fair to both the parties, we deem it proper to restore both the issues raised on merits i.e. additions towards bogus sundry creditors and under-valuation of work-in-progress to the file of the ld. CIT(A) for afresh adjudication and to pass a speaking order after providing sufficient opportunity to the assessee to file its submissions and other documents, if considered necessary and also to call for remand report, if any new evidences are filed. The assessee is also directed to remain compliant and not to take adjournment unless otherwise required for reasonable causes. Thus, the appeal of the assessee is allowed for statistical purposes.

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

Kolkata, the 4th September, 2023.

Sd/-
[संजय गर्ग /Sanjay Garg]
न्यायिक सदस्य /Judicial Member

Sd/-
[डॉक्टर मनीष बोर्ड /Dr. Manish Borad]
लेखा सदस्य /Accountant Member

Dated:04.09.2023.

RS

Copy of the order forwarded to:

1. Jayanti Sahoo
2. ITO, Ward-37(2), Kolkata
3. CIT(A)-
4. CIT- ,

5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches