

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

श्री राजेश कुमार, लेखा सदस्य

एवं

श्री संजय शर्मा, न्यायिक सदस्य

के समक्ष

Before

SRI RAJESH KUMAR, ACCOUNTANT MEMBER

&

SONJOY SARMA, JUDICIAL MEMBER

I.T.A. No.: 78/KOL/2023

Assessment Year: 2014-15

Ronak Ajmera.....Appellant
[PAN: AGKPA 8397 G]

Vs.

ITO, Ward-31(4), Kolkata.....Respondent

Appearances by:

Assessee represented by – Sh. Miraj D. Shah, A/R.

Department represented by – Sh. Altaf Hussain, Addl. CIT.

Date of concluding the hearing : August 10th, 2023

Date of pronouncing the order : October 16th, 2023

ORDER

Per Rajesh Kumar, Accountant Member:

This appeal is preferred by the assessee is against the order of Learned Commissioner of Income-tax (Appeals)- NFAC, Delhi [hereinafter referred to Ld. 'CIT(A)'] dated 10.01.2023 for the Assessment Year (in short 'AY') 2014-15.

2. At the time of hearing the counsel of the assessee has pressed only ground nos. 11 & 12 that the assessment order was passed by collecting the materials on the back of the assessee and used to make the addition without confronting the same to the assessee and assessee not being provided cross examination of the person whose statement was relied by the AO despite being requested and therefore the order passed is against the principles of natural justice.

3. The facts in brief are that the issue involved in the present appeal is against the disallowance of deduction claimed u/s 35(1)(ii) of the Act amounting to Rs. 4,37,500/-. The assessee has assailed the order of the first appellate authority on various grounds taken on legal issues as well as on merit. However, at the time of hearing, the assessee only pressed ground no. 11 & 12 wherein the assessee has challenged the order of the Assessing Officer (in short ld. 'AO') on the ground of violation of principles of natural justice as the assessee has not been allowed the cross examination of adverse witnesses whose statements were relied by the AO to make the addition/disallowance.

4. After hearing the rival contentions and perusing the material on record including the assessment order and the order passed by Ld. CIT(A), we observe that the assessee has moved a specific request before the AO to the effect that the assessee may be allowed cross examination of the adverse witnesses whose statements were relied by the AO in order to make the addition/disallowance which has not been allowed. In our opinion, the said action of the AO in not allowing the assessee the

opportunity of cross examination is in clear violation of principles of natural justice and therefore, the order passed by the AO is unsustainable. Accordingly, we set aside the order of Ld. CIT(A) and restore the issue to the file of the AO with a direction to allow the assessee cross examination of the adverse witnesses whose statements were relied or used against the assessee.

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

Kolkata, the 16th October, 2023.

Sd/-

[Sonjoy Sarma]
Judicial Member

Sd/-

[Rajesh Kumar]
Accountant Member

Dated: 16.10.2023

Bidhan (P.S.)

Copy of the order forwarded to:

- 1. Ronak Ajmera, 2/1A, Elgin Road, Bhawanipur, Kolkata-700 020.**
- 2. ITO, Ward-31(4), Kolkata.**
- CIT(A)-NFAC, Delhi.
- CIT-
- CIT(DR), Kolkata Benches, Kolkata.

// True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata