

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI “SMC” BENCH: NEW DELHI**

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

**ITA No.4210/Del/2018
[Assessment Year : 2012-13]**

Ayursidhha Inc., V-17/18, DLF Phase-III, Gurgaon, Haryana. PAN-AAMFA9665K	vs	ITO, Ward 1(12), Gurgaon.
APPELLANT		RESPONDENT
Appellant by	Shri Tarun Tulsani, CA	
Respondent by	Shri Om Parkash, Sr.DR	
Date of Hearing	06.12.2023	
Date of Pronouncement	12.12.2023	

ORDER

PER KUL BHARAT, JM :

The present appeal filed by the assessee is directed against the order passed by Ld.CIT(A)-1, Gurgaon dated 15.02.2018 for the assessment year 2012-13.

2. The assessee has raised following grounds of appeal:-

1. *“Ld. Commissioner of Income Tax (Appeals)-1, Gurgaon failed to appreciate that the Appellant has appeared on all dates fixed for the hearing and filed the letters of adjournment. The appellant complied with the terms of the hearing notice issued by Commissioner of Income Tax (Appeal)-XXV, Delhi as well as notice issued by Assessing Officer.*
2. *The appellant is a partnership firm engaged in the business of manufacturing of herbal products running its business from V-17/18, DLF-III, Gurgaon, Haryana and VPO Raja Khalsa, tehsil Indore, Distt. Kangra (HP).*

3. *Ld. Commissioner of Income Tax (Appeals)-1, Gurgaon and Assessing Authority erred in disregarding the basic conditions prescribed for making an assessment under section 143(3) and the relevant order is not based completely on material available with the A.O;*
4. *The Income Tax Officer, Ward-1(2), Gurgaon has invoked the provisions of section 143(3) of the Income Tax Act, 1961 ("the Act") in making assessment in case of the Appellant. Due to change of jurisdiction, the case was transferred to AO of Ward- 1(2) from ward 1(1) and issued questionnaire from new AO on 19th Feb-15 for fixation of hearing on 3rd March-15. AO ward-1(2) has also mentioned in Assessment Order on Point no-2 of page-2 that AR has attended time to time. In fact case has started 3rd March-15 onwards. A.O failed to appreciate that the Appellant had appeared on following dates, for attending the hearing in response of notice received under section 143(2) of the Income Tax Act, 1961:-*
24th July-2014,
3 March-2015, attended the notice
10th March-2015, detailed reply submitted
18th March-2015
No proper & sufficient opportunity was given of being heard before issue of this Assessment Order for expressing his true position as envisaged under principle of natural justice.
The AO has not given the opportunity of the hearing on the above said representations and completed assessment as per material available on records like ex-parte under section 144 and not granting of an opportunity of being heard to the Appellant.
5. *Appellant has neither received any intimation nor notices under section 142(1) of the Income Tax Act, 1961dt.19th and 20th March-2015 which have mentioned by AO in his order. Authorized*

representative of assessee rushed to attend the hearing on March 18th to submit the part details and also to seek adjournment of the hearing for the balance details.

6. *Ld. CIT-(Appeal-XXV) has passed the order on 15th February -2018 without giving the proper opportunity whereas there is no time constraint like in cases of time baring matters.*

7. *Without prejudice to Ground (1) & (4) the ITO erred in making addition amounting to Rs.13,93,366.00 to the income of Rs.0.00 declared by the Appellant as claimed deduction u/s 801C of the Income Tax Act, 1961.*

8. *Ld. Commissioner of Income Tax (Appeals)-1, Gurgaon failed to appreciate and ought to have held that:-*

(a) *The expenditure is solely for business purpose and revenue in nature.*

(b) *An amount of Rs. 13,93,370/- was added in the profit on account of written off Sundry Creditors, Misc. Income and Freight Outward Income.*

(c) *The appellant company has booked income of Rs. 13,24,699/- on account of creditors written back of previous years. They were the creditors of appellant company pending since long. Correspondingly Appellant has also written back Debtors of Rs.15,45,676/- which have also static since long and claimed as Bad Debts during the same assessment year & details along with ledger accounts have submitted in submission dt. 10 March-15. AO has ignored that facts and disallowed Sundry Creditors only.*

Ld. Commissioner of Income Tax (Appeals)-1, Gurgaon and AO has disallowed Sundry Creditors written off of Rs.13,24,699/- on the basis of exemption u/s 80IC of the Act will not be allowed again. In a similar way, Debtors w/off

Rs.15,45,676/- should have also not covered u/s 80IC as both have static since long.

Ld. Commissioner of Income Tax (Appeals)-1, Gurgaon and AO has not passed Balanced Order and made the addition without any basis.

(d) An amount of Rs.11,412.00 was added in the Income of the Appellant company on account of Misc. Income.

(i) Appellant has earned Misc. Income of Rs.11,412/- out of business income of the firm.

(ii) Appellant company has charged freight to the vendors for delivery of goods at fixed rate and the same have been booked as Income of Rs.57,255/- under Freight Outward Charges.

Appellant has also written back Debtors of Rs.15,45,676/- which have also static since long and claimed as Bad Debts during the same assessment year. Ld. Ld. Commissioner of Income Tax (Appeals)-1, Gurgaon and AO has not considered as Bad Debt expenses will not be allowable for deduction of u/s 80IC. Bad Debts of Rs.15,45,676/- is also other than those expenses which is eligible for deduction u/s 801C.

(e) Ld. Commissioner of Income Tax (Appeals)-1, Gurgaon and Ld. AO has made the total addition of Rs.13,93,366/- on the basis of other than those income which is eligible for deduction u/s 80IC and ignored the same treatment for expenses side under the head of Bad Debts of Rs. 15,45,676/-.

Ld. Commissioner of Income Tax (Appeals)-1, Gurgaon has confirmed addition Rs. 13,24,699/-and Rs.11,412/-which has earlier made by AO in the profits of on account of written off Sundry Creditors, Misc.

Income and Freight Outward Charges respectively by ignoring all the above said facts.

9. *The Appellant craves to add to alter or amend the above grounds of appeal at the time of hearing.”*

3. The present appeal is barred by 26 days. Ld. Counsel for the assessee reiterated the submissions as made in the application seeking condonation of delay.

4. Ld. Sr. DR for the Revenue opposed this submission of the assessee.

5. However, looking to the averment made in the application which is not rebutted by the Revenue, the delay is condoned and the appeal filed by the assessee is taken up for hearing, for decision on merit.

6. Apropos to grounds of appeal, Ld. Counsel for the assessee at the outset, submitted that the Lower Authorities have not given sufficient time to the assessee to represent its case. Ld. Counsel for the assessee submitted that under the facts of the present case, the matter may be restored to the Assessing Authority. He contended that the assessee has good case on merit as the assessee is eligible for deduction u/s 80IC of the Act.

7. On the other hand, Ld. Sr. DR for the Revenue opposed these submissions and supported the orders of the authorities below.

8. I have heard Ld. Authorized Representatives of the parties and perused the material available on record. Considering the material available on record, I am of the considered view that the Authorities below ought to have given reasonable opportunity to explain as to how the assessee is eligible for

deduction u/s 80IC of the Income Tax Act, 1961 (“the Act”). Therefore, to subserve the interest of principle of natural justice, I deem it proper to restore the assessment to the file of the Assessing Officer (“AO”) and set aside the impugned order. The AO would frame the assessment afresh after giving reasonable opportunity of being heard to the assessee. Grounds raised by the assessee are accordingly, allowed for statistical purposes.

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

Order pronounced in the open Court on 12th December, 2023.

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

** Amit Kumar **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI