

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM

आयकर अपील सं./ITA No.231/SRT/2023

Assessment Year: (2016-17)

(Hybrid Hearing)

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| Paresh Jabbarmal Khandelwal (HUF), 806, Luxuria Business, Near V. R. Mall, Dumas Road, Surat, Email: admin@yashvigroup.in | Vs. | The ACIT, Circle - 1(3), Surat |
| स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AALHP7902F | | |
| (Appellant) | | (Respondent) |

आयकर अपील सं./ITA No.383/SRT/2023

Assessment Year: (2016-17)

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| The ACIT, Circle - 2(1)(1), Surat | Vs. | Paresh Jabbarmal Khandelwal (HUF), 806, Luxuria Business, Near V. R. Mall, Dumas Road, Surat Email: admin@yashvigroup.in |
| स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AALHP7902F | | |
| (Appellant) | | (Respondent) |

| | |
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| Appellant by | Shri M. J. Rindani, CA with Ms. Devina Patel, CA |
| Respondent by | Shri S. M. Keshkamat, CIT(DR) |
| Date of Hearing | 11/12/2023 |
| Date of Pronouncement | 11/12/2023 |

आदेश / O R D E R

PER DR. A. L. SAINI, AM:

Captioned cross appeals filed by the Assessee and Revenue, pertaining to same Assessment Year (AY) 2016-17, are directed against the common order passed by the Learned Commissioner of Income Tax (Appeals), [in short “the Id. CIT(A)”], National Faceless

Appeal Centre (in short 'the NFAC'), Delhi, dated 31.03.2023, which in turn arises out of an assessment order passed by Assessing Officer u/s 144 of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), dated 10.12.2018.

2. At the outset itself, learned Departmental Representative [Id. CIT(DR)] for the Revenue submitted that assessment order was passed by the Assessing Officer under section 144 of the Act. The assessee has not submitted the required documents and details before the Assessing Officer, therefore Assessing Officer has passed *ex parte* order under section 144 of the Act. On appeal by the assessee before Id. CIT(A), the assessee submitted some additional evidences and documents. These additional evidences and documents were remitted back to the file of the Assessing Officer for remand report. During the remand report proceedings, the assessee has not cooperated with the Assessing Officer and nothing has been submitted by the assessee before the Assessing Officer during the remand proceedings. Therefore, the Id. CIT(A) has also not passed the order based on the evidences submitted by the assessee, as the assessee has failed to produce the relevant documents and evidences during the original assessment proceedings as well as remand proceedings. Therefore neither the Assessing Officer nor Id. CIT(A) has examined the relevant documents and evidences. The Assessing Officer has estimated the profit at the rate of 12% of the total turnover. On appeal, the Id. CIT(A) restricted the addition at the rate of 8%. During the assessment year under consideration, the assessee has shown Nil / negative income, whereas in previous year and subsequent year the assessee has shown profits. In this scenario, the Id. CIT(DR)

contended that matter may be remitted back to the file of Assessing Officer for fresh assessment.

3. The Id. CIT(DR) therefore contended that since none of the documents and evidences were examined by the Assessing Officer during the original assessment proceedings or during remand proceedings as the assessee did not submit any document before lower authorities, therefore matter may be remitted back to the file of Assessing Officer for fresh assessment.

4. On the other hand, Learned Counsel for the assessee fairly agreed that the assessee has not submitted documents and details neither during the original assessment proceedings under section 144 of the Act, nor during the remand proceedings, therefore Assessing Officer did not examine the basic documents and evidences. The assessee has shown the profit in subsequent year and previous year. However, in current year, the assessee has shown the losses / Nil income. In these circumstances, the Ld. Counsel for the assessee submitted that the matter may be remitted back to the file of Assessing Officer to examine the basic documents and evidences and to frame the assessment order afresh.

5. We have heard both the parties and carefully gone through the submissions put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the facts of the case including the findings of the Id. CIT(A) and other material brought on record. We note that assessee under consideration has shown profit in subsequent year and profit in the previous year. However, in the current year, the assessee has shown the losses and no reason was given by the assessee about the losses / Nil income.

Therefore, we are of the view that since the assessee is an importer of coal and he sold the coal to the corporate companies in India, therefore assessee has to furnish the required documents relating to import of coal and the subsequent sale of coal in India and the profit earned by the assessee. The assessee should also submit audited balance sheet and profit and loss account. Therefore, we are of the view that the matter should be remitted back to the file of the Assessing Officer for fresh assessment. We direct the assessee to furnish the details in respect of import of coal and sale of coal in India and other details of expenses / income, as required by the Assessing Officer to frame the assessment order afresh. Therefore, both the cross appeals filed by the Revenue and Assessee are allowed for statistical purposes.

6. In the result, both these appeals filed by Assessee and Revenue are allowed for statistical purposes.

Order is pronounced on 11/12/2023 in the open court.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

सुरत /Surat

दिनांक/ Date: 11/12/2023

SAMANTA

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

// TRUE COPY //

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Surat