

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A', NEW DELHI**

Before Sh. Kul Bharat, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 179/Del/2020 : Asstt. Year : 2010-11

Associated Teckno Plastics Pvt. Ltd., G-11, First Floor, Preet Vihar, Delhi-110092	Vs.	Income Tax Officer, Ward-3(3), New Delhi-110002
(APPELLANT)		(RESPONDENT)
PAN No. AAACA2525K		

Assessee by : None

Revenue by : Sh. Kanv Bali, Sr. DR

Date of Hearing: 25.04.2024

Date of Pronouncement: 03.05.2024

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of Id. CIT(A)-I, New Delhi dated 18.07.2019.

2. Following grounds have been raised by the assessee:

"1. The dismissal of the following Ground of appeal by the Commissioner of Income Tax (Appeal) that

"Notice dated 17.03.2017 u/s 148 being issued at an earlier address of the appellant while the current address of the appellant was available with the department, is unlawful and consequential re-assessment framed on the basis of such unlawful notice is therefore liable to be quashed"

is unlawful and therefore the reassessment order framed on the basis of such Notice is unlawful and is liable to be quashed.

2. The dismissal of the following Ground of appeal by the Commissioner of Income Tax (Appeal) that

"In case of re-assessment proceedings, no notice u/s 143(2) has been issued by the Assessing Officer and in the absence of issue of such notice u/s 143(2), the Assessing Officer did not derive any jurisdiction to assess the assessee u/s 147 read with Section 143(2) and in the absence of such jurisdiction, the re- assessment framed is unlawful and is liable to be quashed"

is unlawful and therefore the reassessment order framed without issue of Notice u/s 143(2) is unlawful and is liable to be quashed.

3. The rejection of the application of the appellant filed under Rule 46A for furnishing the Purchase Deeds of the property sold by the appellant and confirmation of addition of Rs.1,02,52,000/- (the sale proceeds for sale of property) as income of the appellant by the Commissioner of Income Tax (Appeals) is contrary to facts and law and therefore the addition of Rs.1,02,52,000/- is liable to be deleted and only capital gain on sale of property, if any are liable to be assessed to income."

3. The Revenue held that as per the ITD system, the assessee has not filed return of income for the A.Y. 2010-11. After duly recording the reasons, notice u/s 148 of the Income Tax Act, 1961 has been issued by the Revenue and the assessee has not complied to the notices issued and also has not filed.

4. Since no return was filed in compliance to the notice u/s 148, notice u/s 142(1) alongwith questionnaire was issued on 23.05.2017, fixing the case for hearing on 30.05.2017. None attended nor any reply or submissions were made. Further, notice u/s 142(1) was again issued on 05.06.2017 fixing the case for hearing on 12.06.2017. In response to the notice, letter dated 09.06.2017 was received from S.D. Chopra & Associates, CA, requesting for adjournment to submit the details. On request, the case was adjourned to 21.06.2017 to submit the details. On 21.06.2017, none attended not any details were filed. Thereafter, notice u/s 142(1) was again

issued on 01.08.2017 for compliance on 09.08.2017. The said notice was also sent to the Director of the assessee company and also through e-mail. On the said date, none attended nor any details were filed. Letter dated 09.08.2017 was received from S.D. Chopra & Associates, CA, requesting for adjournment to submit the details. On request, the case was adjourned to 23.08.2017 to submit the details.

5. On 23.08.2017, Sh. Manish Gupta, CA and AR of the assessee company appeared and filed letter dated 23.08.2017 alongwith power of attorney and requested for the reasons for reopening of assessment. The reasons were provided vide letter dated 23.08.2017 and the same were received by hand by the AR of the assessee company. Notice u/s 142(1) was also issued on 23.08.2017 to submit copy of ITR filed for A.Y. 2010-11 alongwith copy of balance sheet, computation of income and bank statements, for compliance on 07.09.2017.

6. On 07.09.2017, none attended nor any details were filed. In view of the above, final show cause notice for framing order u/s 144 of the Income Tax Act, 1961 was issued on 06.10.2017 fixing the case for hearing on 16.10.2017. However, on this date, none attended nor any submissions were made. On 06.11.2017, notice u/s 142(1) was again issued to the assessee to submit the details, fixing the case for 13.11.2017. On 13.11.2017, the AR of the assessee appeared, however, no details were filed with regard to ITR filed, Balance Sheet, Computation of Income and bank statements. The AR was apprised by the Assessing Officer that since this is a time barring matter, no further adjournments can be given. The AR

was asked to file all details as asked for by 20.11.2017. On 20.11.2017, no one attended nor details have been filed.

7. Thus, there were constant attempts by the assessee to avoid submitting details despite various adjournments granted, the Assessing Officer is left with no option but to complete the assessment to the best of the judgment as per provisions of section 144(1) of the Income-tax Act, 1961 and pass the order u/s 144 on 14.11.2017.

8. This indicates that the assessee has deliberately avoided furnishing of replies and production of books of accounts. A number of opportunities were given to the assessee by the Assessing Officer which proves a conscious attempt not to furnish evidence at the assessment stage.

9. Hence, based on the information available on record, the AO made addition of Rs.1,02,52,000/- on account of sale of property.

10. Aggrieved, the assessee filed appeal before the Id. CIT(A).

11. Before the Id. CIT(A), the assessee filed application under Rule 46A for admission of additional evidences. The Id. CIT(A) after obtaining the remand report from the Assessing Officer and after obtaining the rejoinder from the assessee held that the assessee has not filed the return of income in response to the notice issued u/s 148 of the Income Tax Act, 1961 and also a chronic and willful defaulter. Quoting the provisions of Rule 46A, viz.,

"a) where the Assessing Officer has refused to admit evidence which ought to have been admitted; or

(b) where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the Assessing Officer; or

(c) where the appellant was prevented by sufficient cause from producing before the Assessing Officer any evidence which is relevant to any ground of appeal; or

(d) Where the Assessing Officer has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal."

the Id. CIT(A) held that the assessee could not qualify within the ambit of Rule 46A(1) and refused the admission of additional evidences.

12. Aggrieved, the assessee filed appeal before the Tribunal.

13. Heard the arguments of both the parties and perused the material available on record.

14. The assessee has also raised the grounds of non-issuance of notice u/s 143(2) of the Income Tax Act, 1961 by the Assessing Officer. Since, the assessee has not filed return of income in response to notice issued u/s 148 of the Income Tax Act, 1961, no notice u/s 143(2) of the Income Tax Act, 1961 could be issued and the action of the Assessing Officer is held to be lawful and the assessment completed u/s 144 of the Income Tax Act, 1961 is legally valid. The appeal of the assessee on this ground is dismissed.

15. We also find that the assessee has failed to comply appropriately on 6 occasions before the Assessing Officer and has taken up the grounds before the Id. CIT(A) for admission of additional evidences, which the Id. CIT(A) refused to accept. The assessee has taken up the ground before the Tribunal against the rejection of application of the assessee under Rule 46A for furnishing the purchase deed to the property sold by the assessee. We strongly believe that every assessee has a right to appeal before the authorities against any addition or disallowance made to the returned income, at the same time, it is least expected that the assessee would comply to the notices issued by the authorities in an appropriate way. The assessee having miserably failed to attend before the Assessing officer has taken the grounds of "*audi alteram partem*", rejection of additional evidences before us. While the grievance of the assessee is not being preempted by us, at the same time, we feel that the conduct of the assessee is clogging the already burdened justice delivery system. Hence, we hereby direct the assessee to pay an amount of Rs.5,000/- to the "Prime Minister's National Relief Fund" and approach the Id. CIT(A) for a fresh hearing *denovo* which shall be considered. The assessee shall demonstrate before the Id. CIT(A), the reasons that have prevented by sufficient cause from producing the evidence which was called upon to produce by the Assessing Officer. The Id. CIT(A) is hereby directed to afford an opportunity of being heard and consider the reasons given by the assessee and pass an order *de-novo*.

16. In the result, the appeal of the assessee is partly allowed for statistical purpose.

Order Pronounced in the Open Court on 03/05/2024.

Sd/-

(Kul Bharat)
Judicial Member

Dated: 03/05/2024

Subodh Kumar, Sr. PS

Copy forwarded to:

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

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR