

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "C", PUNE

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
Ms. ASTHA CHANDRA, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.125/PUN/2024
निर्धारण वर्ष Assessment Year : 2015-16

York Transport Equipment (India) Private Limited, Gat No.468-472, 563-565, Navlakhumbre, Talegaon, Tal. Maval, Badhalawadi, Umbre Navlakh B.O. Pune 410507, Maharashtra PAN : AAACY3620R	Vs.	ITO, Ward-10(1), Pune
Appellant		Respondent

Assessee by : Shri Dhruvil Mishra
Revenue by : Shri Kailash Mangal
Date of hearing : 29.05.2024
Date of pronouncement : 29.05.2024

आदेश / ORDER

PER INTURI RAMA RAO, AM:

This is an appeal filed by the assessee directed against the order of CIT(A)-13, Pune dated 28.11.2023 for the assessment year 2015-16.

2. Briefly, the facts of the case are that the appellant is a company incorporated under the provisions of Companies Act, 1956. It is engaged in the business of Manufacturing and Trading of Trailer axis, Suspension, Landing gears and other Automotive components. The appellant company filed the Return of Income for the A.Y. 2015-16

declaring Nil income on 30.11.2015. Against the said return of income, the assessment was completed by the Assessing Officer vide order dated 18.01.2019 passed u/s.143(3) r.w.s.144C(3) of the Income-tax Act, 1961 (hereinafter referred to as 'The Act') after making addition on account Transfer Pricing adjustment u/s.92CA(3) of Rs.6,79,82,288/-.

3. Being aggrieved, an appeal was filed before the CIT(A), who vide impugned order dismissed the appeal *in limine* for non-prosecution, without rendering any finding on merits.

4. Being aggrieved, the appellant is in appeal before the Tribunal in the present appeal.

5. We heard the rival submissions and carefully perused the relevant material on record. At the outset, we find that the CIT(A) had issued the hearing notices through ITBA portal as mentioned in para 1.5 of his order. Then the CIT(A) had proceeded to dismiss the appeal *in limine* for non-prosecution. In our considered opinion, it is not a valid method and manner of service of notice as specified under the provisions of section 282(1) of the Act. Therefore, it is crystal clear that the notices were not served upon the appellant company. To fortify our view, we would like to make a reference to a decision of the Hon'ble Punjab & Haryana High Court in the case of *Munjal BCU Centre of Innovation and Entrepreneurship Vs. CIT (Exemptions) (2024) 463 ITR 560 (P&H)*, wherein the Hon'ble High Court after making reference to provisions of

282(1) held that service of notice through ITBA portal is not valid service and remanded the matter to AO for *denovo* disposal of case. The relevant paragraphs of the judgment are reproduced below :

“7. We are afraid that we cannot subscribe to the submissions as advanced by the learned counsel for the Revenue-respondent. The provisions of section 282(1) of the Act of 1961 and rule 127(1) of the Income-tax Rules, 1962 provides for a method and manner of service of notice and orders which read as follows :

.....

8. In view of the above, it is essential that before any action is taken, communication of the notice must be done in terms of the provisions as enumerated hereinabove. The provisions do not mention communication to be “presumed” by placing notice on the e-portal. A pragmatic view has to be adopted always in these circumstances. An individual or a company is not expected to keep the e-portal of the Department open all the time so as to have knowledge of what the Department is supposed to be doing with regard to the submissions of forms etc. The principles of natural justice are inherent in the income-tax provisions and the same are required to be necessarily followed.

9. Having noticed as above, this court is of the firm view that the petitioner has not been given sufficient opportunity to put up its plea with regard to the proceedings under section 12A(1)(ac)(iii) of the Act of 1961 and as it was not served with any notice. Therefore, he would be entitled to file his reply and the Department would of course be entitled to examine the same and pass a fresh order thereafter.

10. In view of the above, the writ petition is allowed and the order dated January 16, 2023 (annexure P-5) is quashed and set-aside. The Department would provide an opportunity of hearing to the petitioner and they will also allow the petitioner to appear personally for the purpose and pass a speaking order independent of the order passed earlier by them on January 16,2023. The same shall be done expeditiously provided the petitioner file his reply within a period of three weeks.”

In view of the above legal position, we are of the considered opinion that the CIT(A) has not properly served the notice of hearing to the appellant company.

6. Furthermore, we find the Id. CIT(A) without discussing anything on merits of the controversy of the addition made on account of Transfer Pricing adjustment, simply dismissed the appeal *in limine*, which is contrary to settled position of law. It is a trite law that the CIT(A) should have dealt with the merits of the issue in appeal, even in the case of an *ex-parte* order. In this regard, reference is being made to a decision of the Hon'ble Bombay High Court in the case of *Pr.CIT(Central) Vs. Premkumar Arjundas Luthra (HUF) Bombay*/[2017] 297 CTR 614 (Bombay) wherein it was held that CIT(A) is not empowered to dismiss the appeal for non-prosecution.

7. In the light of above discussion, we deem it appropriate to remit the matter to the file of CIT(A) for *de novo* disposal of the issue in accordance with law. Ordered accordingly.

8. In the result, the appeal filed by the assessee stands partly allowed for statistical purpose.

Order pronounced on this 29th day of May, 2024.

Sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 29th May, 2024
Satish

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr.CIT-3, Pune.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "C" बेंच,
पुणे / DR, ITAT, "C" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune