

IN THE INCOME TAX APPELLATE TRIBUNAL

"A" BENCH, MUMBAI

BEFORE SHRI NARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.598/Mum./2024
(Assessment Year : 2009-10)

ITA no.597/Mum./2024
(Assessment Year : 2012-13)

Aceagro Biosciences Ltd

C/o Cottage No.1, Vasant
Building Compound, Opposite
Shanti Bhavan Buidling, Jukar
Marg, Juhu, Mumbai
PAN – AAECA1508J

..... Appellant

v/s

ITO Ward-12(1)(1)

Maharshi Karve Road, New
Marine Lines, Churchgate,
Mumbai-400020

..... Respondent

Assessee by :Ms Kinjal Bhuta

Revenue by :Shri Sunny Kachhwaha

Date of Hearing – 27/05/2024

Date of Order – 05/06/2024

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeals have been filed by the assessee challenging the separate impugned orders of even date 21/12/2023 passed under section 250 of the Income Tax Act, 1961 ("the Act") by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, ["learned CIT(A)"], for the assessment years 2009-10 and 2012-13.

2. Since both the appeals pertain to the same assessee, therefore, as a matter of convenience, these appeals were heard together and are being decided by way of this consolidated order.

ITA No. 598/Mum./2024
Assessee's appeal- A.Y. 2009-10

3. The only grievance of the assessee is against the dismissal of its appeal by the learned CIT(A) as assessee failed to file the appeal electronically.

4. During the hearing, at the outset, the learned Authorised Representative ("*learned AR*") submitted that the assessment order under section 143(3) of the Act was passed by the Assessing Officer on 23/03/2016. Being aggrieved, the assessee physically filed the appeal before the learned CIT(A) on 21/04/2016, i.e. within the limitation period. The learned AR submitted that due to various circumstances, as mentioned in the affidavit of the Director, forming part of the paper book from pages 1-4, the assessee could not electronically file the appeal in view of the newly substituted provisions of Rule 45 of the Income Tax Rules, 1962, w.e.f. 01/03/2016 by IT (Third Amendment) Rules, 2016. In view of the above, the learned CIT(A), treating the appeal physically filed by the assessee as invalid, and dismissed the same.

5. On the other hand, the learned Departmental Representative vehemently relied upon the impugned order.

6. Having considered the submissions of both sides and perused the material available on record, we find that the assessment order under section 144 of the Act was passed on 23/03/2016. Accordingly, as per the provisions

of section 249(2) of the Act, the assessee was required to file the appeal within a period of 30 days from the date of receipt of the assessment order. We find from the record that the assessee filed the its appeal before the learned CIT(A) on 21/04/2016 i.e., within 30 days from the date of the assessment order. In the affidavit filed by the Director of the assessee company, it has been submitted that due to various unforeseen circumstances, like the CBI enquiry due to fraud by one of the bank employee, death of his brother, who was solely handling the business, in January, 2016 due to sudden heart-attack, seizure of documents by the CBI, etc., he does not even have the assessment order and the CIT(A) records. Further, the appeal before the learned CIT(A) was filed physically by the old Chartered Accountant, who has also refused to co-operate and provide necessary information.

7. From the perusal of the material available on the record, it is evident that the assessee was diligent and interested in pursuing the litigation and therefore filed the appeal, though physically, before the learned CIT(A) within the limitation period. However, due to the circumstances as elaborated in the affidavit filed by the Director neither the assessee could respond to the show cause notices issued by the learned CIT(A) nor could filed the appeal electronically as per the new e-filing procedure which was introduced w.e.f. 01/03/2016 and within the extended time granted by the CBDT till 15/06/2016. Therefore, in the interest of justice, we restore the matter to the file of the learned CIT(A) with a direction to the assessee to file its appeal electronically as per the new e-filing procedure. The learned CIT(A) is directed to consider the appeal electronically filed by the assessee as having been filed

within the limitation period and decide the same on merits. Needless to mention no order shall be passed without affording reasonable opportunity of hearing to the parties. Further, the assessee is directed to appear before the learned CIT(A) on all the dates of hearing as may be fixed without any default. With the above directions, the impugned order for the assessment year 2009-10 is set aside and the grounds raised by the assessee in its appeal are allowed for statistical purposes.

8. In the result, the appeal by the assessee for the assessment year 2009-10 is allowed for statistical purposes.

ITA No. 597/Mum./2024
Assessee's appeal- A.Y. 2012-13

9. During the hearing, the learned AR at the outset submitted that during the physical hearings before the learned CIT(A), the assessee filed its submissions, however, the learned CIT(A) without considering the same dismissed the appeal filed by the assessee and upheld the addition made by the AO. From the perusal of the impugned order dated 21/12/2023 passed by the learned CIT(A), we find that on 12/03/2020, 18/01/2021, 18/01/2022, 04/08/2022, 26/09/2023, 30/10/2023 and 15/11/2023, the learned CIT(A) issued notices to the assessee. We find that in response to the first notice issued on 12/03/2020, the assessee filed its written submission before the learned CIT(A) on 18/03/2020, the acknowledged copy of the same forms part paper book from pages 2 – 6. However, it is evident from the record that the learned CIT(A) upheld the addition made by the AO without considering the aforesaid submission filed by the assessee.

10. Accordingly, in view of the facts and circumstances as noted in the foregoing paragraph, we deem it appropriate to restore the appeal to the file of the learned CIT(A) for *de novo* adjudication after consideration of the submission filed by the assessee. Since the matter is restored for consideration afresh, the assessee shall be at liberty to furnish any other submission in support of its claim before the learned CIT(A). Needless to mention no order shall be passed without affording reasonable opportunity of hearing to the parties. Further, the assessee is directed to appear before the learned CIT(A) on all the dates of hearing as may be fixed without any default. As the matter is being restored to the file of the learned CIT(A) for adjudication on merits, the other grievances raised by the assessee in the present appeal do not call for adjudication at this stage. Accordingly, grounds raised by the assessee are allowed for statistical purposes.

11. In the result, the appeal by the assessee for the assessment year 2012-13 is allowed for statistical purposes.

12. To sum-up, both appeals by the assessee are allowed for statistical purposes.

Order pronounced in the open Court on 05/06/2024

Sd/-
NARENDRA KUMAR BILLAIYA
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 05/06/2024

Vijay Pal Singh, (Sr. PS)

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Mumbai; and
- (5) Guard file.

True Copy

By Order

Assistant Registrar
ITAT, Mumbai