

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'ए', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH KOLKATA

Before Shri Sanjay Garg, Judicial Member and Shri Rakesh Mishra, Accountant Member

I.T.A. Nos.72&73/Kol/2024

Assessment Years: 2013-14

Unitech Fabricators & Engineers Pvt. Ltd.....Appellant
C/o Subash Agarwal & Associates,
Advocates, Siddha Gibson,
1, Gibson Lane, Suite 213, 2nd Floor,
Kolkata – 700069.
[PAN:AAACU5211A]

vs.

ITO, Ward-6(1), Kolkata..... Respondent

Appearances by:

Shri Siddharth Agarwal, Advocate, appeared on behalf of the assessee.

Shri B. K. Singh, JCIT-Sr. DR, appeared on behalf of the Revenue.

Date of concluding the hearing : April 22, 2024

Date of pronouncing the order : June 24 , 2024

आदेश / ORDER

संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:

The captioned are the two appeals filed by the assessee against the separate orders dated 04.01.2024 & 05.01.2024 of the National Faceless Appeal Centre [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. ITA No.72/Kol/2024 has been preferred assailing the confirmation of quantum additions made by the Assessing Officer, whereas, ITA No.73/Kol/2024 is against the confirmation of penalty levied by the Assessing Officer u/s 271(1)(c) of the Act, which is consequential to the quantum additions contested by the assessee in appeal No.72/Ko/2024. We first take quantum appeal in ITA No.72/Kol/2024.

2. **ITA No.72/Kol/2024** – At the outset, the ld. Counsel for the assessee has brought to our attention that the first appeal of the assessee has been dismissed by the ld. CIT(A) being barred by limitation. The ld. Counsel for the assessee in this respect has brought our attention to the submissions filed before the ld. CIT(A), wherein, it has been pleaded as under:

“The appellant would like to state that the Ld. Assessing Officer has passed the present assessment order in the case of the company by alleging the PAN number of the company to be AAACU5211A and the address of the company to be 172/1, CIT Scheme, VII-M, Ultadanga, Kolkata - 700054, whereas the address of the company was changed to 24, M.B. Road, Birati, Kolkata - 700051 long ago by filing the applicable Form No. 18 with the Registry of the Companies in the year 2003 and the company had been consistently filing its return of income at the said new address with PAN No. being AAACU5051E and it is not known that how the Ld. Assessing Officer assumed the address of the company and PAN Number of the company which he has written in the assessment order which has passed by him. Moreover, in the assessment order the Ld. Assessing Officer has stated that the assessee company never filed any return of income till date. This assumption of the Ld. Assessing Officer is completely erroneous assumption, since the original assessment for the assessment year 2013-14 was completed under Section 143(3) of the Act by DCIT, Circle-1(2), Kolkata(hereinafter referred to as the jurisdictional Assessing officer) vide order dated November 27, 2015 where the said jurisdictional AO correctly recorded the address and PAN number of the company and the order was passed in accordance with the law and the company has been regularly assessed with the said jurisdictional Assessing Officer who has jurisdiction over the company and it is not understood how the present Assessing Officer, i.e., ITO, Ward 6(3), Kolkata, assumed the jurisdiction over the appellant. The Income Tax Officer does not allow two officers to exercise parallel Jurisdiction over an assessee and even if it is allowed there has been no such order allowing parallel jurisdiction and as such the present proceedings initiated by the Ld. Income Tax Officer, Ward 6(3), Kolkata by issuing notices from his email ID cannot be said to be the communication from the jurisdictional Assessing Officer.”

2.1 The ld. Counsel in this respect has referred to page 67 of the paper-book, which is a copy of assessment order passed in the case of

the assessee, wherein, the PAN number of the assessee has been mentioned as AAACU5051E and the address of the assessee has been mentioned as 24, M B Road, Birati, Kolkata-700051. The Id. Counsel has referred Form No.35 and other documents in relation to the appeal filed before the CIT(A), wherein, the same address and PAN number has been mentioned. The assessee has submitted that neither any notice in relation to during the assessment proceedings nor the assessment order was served upon the assessee through physical mode at correct address. That the email sent by the Assessing Officer could not be noticed as the same was lying in the junk mail folder. A separate application before the Id. CIT(A) for condonation of delay was also filed explaining the aforesaid reasons for delay in filing of the appeal before the CIT(A). The Id. Counsel, therefore, has submitted that the delay in filing appeal before the CIT(A) was not intentional but due to the aforesaid reasons.

3. The Id. DR, on the other hand, has relied on the order of the CIT(A).

4. Considering the rival submissions, in our view, the assessee has explained that due to the aforesaid reasonable cause and circumstances, the assessee could not file appeal before the CIT(A) within the prescribed limitation period. Considering the above submissions of the assessee which are corroborated with the relevant documents, we condone the delay in filing the appeal before the CIT(A). The matter is accordingly restored to the file of the CIT(A) for decision afresh on merits. Needless to say that the Id. CIT(A) will give proper opportunity to the assessee to present its case and decide the appeal accordingly irrespective of any delay in filing the appeal. The appeal of the assessee is treated as allowed for statistical purposes.

5. **ITA No.73/Kol/2024** – The present is an appeal against the levy/confirmation of penalty u/s 271(1)(c) of the Act in relation to quantum additions as assailed in ITA No.72/Kol/2024. Since, we have set aside the order of the CIT(A) and restored the matter for decision afresh to the file of the CIT(A) in quantum appeal, accordingly the present appeal against the penalty order is also restored to the file of the CIT(A) to decide along with appeal against the quantum additions of the assessee. This appeal is also treated as allowed for statistical purposes.

6. In the result, the captioned appeals are treated as allowed for statistical purposes.

Kolkata, the 24th June, 2024.

Sd/-

[Rakesh Mishra]

लेखा सदस्य/Accountant Member

Sd/-

[Sanjay Garg]

न्यायिक सदस्य/Judicial Member

Dated: 24.06.2024.

RS

Copy of the order forwarded to:

1. Unitech Fabricators & Engineers Pvt. Ltd
2. ITO, Ward-6(1), Kolkata
3. CIT (A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches