

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES," B"-Bench" JAIPUR

श्री राठौड़ कमलेश जयन्तभाई, लेखा सदस्य एवं श्री नरेन्द्र कुमार, न्यायिक सदस्य के समक्ष
BEFORE: SHRI RATHOD KAMLESH JAYANTBHAI, AM & SHRI NARINDER KUMAR, JM

आयकर अपील सं./ITA. No. 387/JPR/2024
निर्धारण वर्ष / Assessment Year : 2014-15

| | | |
|---|-------------|-------------------------------|
| Rajasthan Renewable Energy Corporation Ltd. E/166 Yudhishisthir Marg, C-Scheme, Jaipur. | बनाम Vs. | DCIT, Circle-6, Jaipur. |
| स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AAACL3171C | | |
| अपीलार्थी / Appellant | | प्रत्यर्थी / Respondent |

निर्धारिती की ओरसे / Assessee by : Shri P. C. Parwal (C.A.)
राजस्व की ओरसे / Revenue by : Shri Anoop Singh (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 24/06/2024
उदघोषणा की तारीख / Date of Pronouncement: 25/06/2024

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, A.M.

Assessee-Rajasthan Renewable Energy Corporation Ltd.-a State Government Corporation, has filed this appeal challenging order dated 01.02.2024 passed by Learned CIT(A)/NFAC.

The matter pertains to assessment year 2014-15.

Vide impugned order, the appeal filed by the assessee Corporation has been dismissed, while observing that despite notices issued by Learned CIT(A), none appeared on behalf of the assessee.

While dismissing the appeal, it was also observed that from the conduct of the assessee in not responding to the notices, it appeared that it was interested or keen in perusing the appeal.

At the same time, Learned CIT(A) observed that while considering records and merits of the case, there was no option but to dismiss the appeal.

2. Vide impugned order, Learned CIT(A) has upheld the order passed u/s 154 of the Income Tax Act, 1961 Act (hereinafter referred to as the "Act").

As is available from record, the Assessing Officer had issued notice to the assessee, u/s 154 of the Act, on 02.04.2019. The ground was that after completion of the assessment u/s 143(3) of the Act on 05.12.2016, order u/s 143(3)/250 of the Act was passed on 06.10.2017, but, on examining the assessment record, it transpired that said order suffered from such a mistake apparent from record, which is stated to have resulted in under- charging of tax including interest.

3. From the order u/s 154 of the Act, it transpires that tax of Rs. 6.27crore was charged after allowing MAT credit of Rs. 3.16 crore pertaining to the period i.e. from Assessment Years 2008-09 to Assessment Year 2013-14, but allowable MAT credit for the assessment

year 2014-15 was Rs. 55.46 lacs only, as against the one allowed i.e. Rs. 3.16 crore.

4. Argument heard. File perused.

5. As noticed above, Learned CIT(A) has dismissed the appeal finding that the assessee did not respond to the notice. Feeling aggrieved by the dismissal of its appeal by Learned CIT(A), the assessee Corporation is before this Appellate Tribunal.

6. Learned AR for the assessee-appellant has submitted that the assessee was not provided adequate opportunity of being heard.

Another ground raised by the Id. AR for the assessee is that while passing the impugned order, and thereby reducing MAT credit from Rs. 3.16 crore to Rs. 55.46 lacs.

7. Learned DR for the department has contended that despite service of notice, there was non appearance before the Assessing Officer and also before Learned CIT(A), and no interference is called for, and this appeal deserves to be dismissed.

8. On going through the impugned order, it is found that Learned CIT(A) has not specified date(s) of the notices stated to have been issued to the assessee during pendency of the appeal.

In written submissions, present today on behalf of the assessee, it has been submitted that first notice issued by CIT(A), NFAC, u/s 250 of the Act was issued on 08.12.2021 i.e. during Covid period, and further that the said notice was followed by two notices dated 06.09.2023 and 12.01.2024. As further put forth in the written submissions, the concerned CA Shri Mukesh Goyal, who was representing the assessee, could not respond to the subsequent two notices dated 6.9.2023 and 12.1.2024, due to oversight. Therefore, the contention is that matter needs to be remitted back, so as to provide reasonable opportunity, of being heard to the assessee.

9. On behalf of the assessee, copy of notice dated 12.01.2024 and a list depicting dates of dispatch of previous notices i.e. View Notices for e-proceedings have been submitted.

10. It may be mentioned here that in the course of arguments, Id. AR for the assessee has not disputed the factum of issuance and service of notice issued by the Assessing Officer u/s 154 of the Act on 02.04.2019.

The only contention raised by the Id. AR for the assessee as regards the order passed by the Assessing Officer u/s 154 of the Act is that he did not consider the income of the assessee while giving effect to the order passed by this Appellate Tribunal in appeal relating to AY 2008-09 to 2013-14.

11. As per powers conferred u/s 154 of the Act, Income Tax Authority is empowered to rectify any mistake apparent from the record.

Herein order u/s 154 of the Act was passed after issuing notices. It is significant to note that on 10.12.2018, this Appellate Tribunal, while disposing of ITA No. 772/JP/2018 filed by the Revenue, relating to assessment year 2013-14 and ITA No. 187/JP/2018 filed by the assessee, had set aside the assessment order and restored the matter to the files of the A/O to examine and verify revised working, while observing in the manner as:-

“The second issue relates to allocation of indirect expenses incurred at the Head office in form of employees and administrative/establishment expenses.

The Id AR has contended that the assessee has worked out the allocation of indirect expenses as per the directions of the Coordinate Bench in AY 2011-12 and as per its working, the indirect expenses allocable to the eligible undertakings amounts to Rs 18,49,771. Further, taking the same into account, as per the revised working, it is eligible for deduction u/s 80IA at Rs 8,56,70,349 as against original claim of Rs 12,21,63,337.”

However, while passing the order u/s 154, relating to the assessment year 2014-15, and in observing that mistake had resulted in under-charging tax, as regards the assessment year 2014-15, the Assessing

Officer appears to have not considered the effect of the above said order passed by this Appellate Tribunal.

12. Therefore, notwithstanding the factum of non appearance of the assessee before the Assessing Officer in response to the notices issued on 02.04.2019, we find it to be a fit case for restoration of the matter to the files of the Assessing Officer, for decision afresh, after providing reasonable opportunity to the assessee, of being heard, and while taking into consideration and giving effect to the order already passed by this Appellate Tribunal as regards AY 2014-15.

13. So far as the impugned order passed by Learned CIT(A) is concerned, even if the assessee has challenged the same on the ground that it could not respond to the notices because of oversight by its CA Shri Mukesh Goyal, section 250 of the Act provides that Learned CIT(A) is to dispose of appeal stating the points for determination, the decision thereon and also the reasons for the decision arrived at.

Here, from the impugned order, it can safely be said that Learned CIT(A) did not consider the grounds raised by the assessee on merits, what to say of recording of any reason for disposal of the appeal on merits. Learned CIT(A) was required to take up and consider all the grounds raised

by the assessee in Form 35, but, the same were not considered for being adjudicated upon on merits.

Result

14. In view of the above discussion and the reasons recorded, this appeal is hereby disposed off for statistical purposes, and the matter is restored to the files of the Assessing Officer to provide reasonable opportunity to the assessee, of being heard, and then to decide the matter afresh, in accordance with law.

Order pronounced in the open court on 25/06/2024.

Sd/-

(नरेन्द्र कुमार)
(NARINDER KUMAR)

न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 25/06/2024

*Santosh

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- Rajasthan Renewable Energy Corporation Ltd, Jaipur.
2. प्रत्यर्थी / The Respondent- DCIT, Circle-6, Jaipur.
3. आयकरआयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्डफाईल / Guard File ITA No. 387/JPR/2024)

Sd/-

(राठौड़ कमलेश जयन्तभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar