



**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH "B", LUCKNOW**

**BEFORE SHRI. SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
AND SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

ITA No.116/LKW/2024
Assessment Year: 2022-23

Anand Transformers (P) Ltd. 9, Industrial Estate Gaddopur Ayodhya	v.	DCIT Circle Faizabad
TAN/PAN:AAGCA1128E (Appellant)		(Respondent)

S.A. No.08/LKW/2024
[In ITA No.116/LKW/2024]
Assessment Year: 2022-23

Anand Transformers (P) Ltd. 9, Industrial Estate Gaddopur Ayodhya	v.	DCIT Circle Faizabad
TAN/PAN:AAGCA1128E (Applicant)		(Respondent)

Assessee by:	Shri P. K. Kapoor, C.A.
Department by:	Shri Sanjeev Krishna Sharma, D.R.

ORDER

PER ANADEE NATH MISSHRA, A.M.:

In this case, return of income was filed by the assessee on 3.11.2022, which was processed under section 143(1) of the Income Tax Act, 1961, and intimation under section 143(1) of the Act was issued to the assessee wherein certain adjustments were made by the Assessing Officer. The adjustments included disallowance of the assessee's claim for deduction under section 80IA(4)(iv) of the Act, amounting to Rs.1,89,71,515/- and

addition of Rs.1,71,901/- on account of provision for bonus. Vide impugned appellate order dated 8.2.2024, assessee's appeal against the aforesaid adjustments made in intimation issued under section 143(1) of the Act was dismissed.

2. The present appeal before us has been filed by the assessee against the aforesaid impugned appellate order dated 8.2.2024. Grounds of appeal are as under:

(1) the Id. CIT (A) has erred in law and on facts in not allowing deduction under section 80-IA of the Act, even through

(a) such "return" had been filed within the due date/extended date; and

(b) the issue of deduction under section 80-IA was covered by the decision made in the appellant's own case in the last several years;

(2) on a due consideration of facts and circumstances of the case, particularly that

(i) deduction under section 80-1A had been allowed consistently in earlier years, such claim being covered (in favour of the appellant) from the findings/decision made/given in preceding years; and

(ii) that the audit report in prescribed form 10CCB had been filed alongwith "return of income", within extended due date, and much before the date of assessment;

(3) Id. CIT(A) has erred in holding that due date for filing of "return" was 31.10.2022, whereas the same got extended by virtue of notification issued by CBDT upto 07.11.2022 and filing of such a report was merely a procedural aspect and deduction could not have been disallowed on such basis.

(4) Id. CIT(A) has wrongly decided the appeal ex-parte, even without providing to the appellant any opportunity of being heard;

(5) In any case, Hon'ble Supreme Court had settled the issue in the case of CIT vs. G.M. Knitting Industries Pvt. Ltd. reported in (2015) 376 ITR 456 and other attendant facts and circumstances of the case (to which attention of the Id. Assessing Officer had duly been invited by the appellant);

(6) disallowance of provision for bonus amounting to Rs.1,71,901/- was not valid at all, considering the fact that such payments had been made before filing of "return of income";

(7) such fact had been placed well before adjustments under section 143(1)(a), before Dy. Director of Income Tax, CPC, Bangaluru (hereinafter referred to as Id. Assessing Officer) and the same was not considered;

(8) order appealed against is contrary to facts, law and principles of natural justice.

2.1 Separately, the assessee has also filed Stay Application vide S.A. No.08/LW/2024. For the sake of convenience, the aforesaid appeal and the aforesaid Stay Application, both filed by the assessee, are being disposed off through this consolidated order.

3. At the time of hearing before us, the Id. authorized representative of the assessee submitted that the impugned appellate order was passed ex-parte qua the appellant assessee. He submitted that the issue in dispute should be restored back to the file of the Id. CIT(A) with the direction to pass fresh appellate order in accordance with law after providing reasonable opportunity to the assessee. The Id. Sr. D.R. for Revenue expressed no objection to the submissions made by the Id.

authorized representative of the assessee. We find, on perusal of the impugned appellate order, that a series of three notices dated 5.1.2024, 24.1.2024 and 1.2.2024 were issued by the Id. CIT(A). The assessee's request for adjournment of hearing fixed on 6.2.2024, vide notice dated 1.2.2024, was not considered favourably by the Id. CIT(A). In respect of earlier notices dated 5.1.2024 and 24.1.2024 also, the assessee had requested for adjournment of hearing. Copies of letter seeking adjournment have been filed by the assessee in the paper book filed during the appellate proceedings in Income Tax Appellate Tribunal. The contents of the aforesaid paper book are as under:

Sl.No.	Particulars
PROCEEDINGS BEFORE CIT(A)	
1	Copy of notice u/s 250 dated <u>05.01.2024</u> issued by Addl./JCIT(A) fixing hearing on 10.01.2024.
2	Copy of adjournment application filed on 08.01.2024 seeking adjournment upto <u>25.01.2024</u>
3	Copy of another adjournment application filed on 23.01.2024 seeking further adjournment of 15 days.
4	Copy of notice u/s 250 dated <u>24.01.2024</u> issued by Addl./JCIT(A) fixing hearing on 30.01.2024.
5	Copy of adjournment application filed on 30.01.2024 seeking adjournment till 14.02.2024.
6	Copy of notice u/s 250 dated <u>01.02.2024</u> issued by Addl./JCIT(A) Fixing hearing on 06.02.2024.
7	Copy of adjournment application filed on 06.02.2024 seeking further adjournment.
8	Copy of written submission dated 08.02.2024 submitted through speed post on 08.02.2024.(without enclosures)

3. On overall consideration of the facts and circumstances of this specific case before us, we find that the Id. CIT(A) acted in undue haste in issuing series of notices at very short intervals. Further, in respect of the last notice dated 1.2.2024, compliance date was fixed on or before 6.2.2024, giving the assessee four days (excluding the date of issue of notice and date of compliance). Therefore, in the specific facts and circumstances of the present appeal, we are of the view that the Id. CIT(A) failed to provide reasonable opportunity to the appellant assessee. Therefore, we set aside the impugned appellate order dated 8.2.2024 and we restore the issues in dispute to the file of the Id. CIT(A) with a direction to pass de novo appellate order in accordance with law after providing reasonable opportunity to the assessee. For statistical purposes, the appeal is partly allowed.

2. As we have already decided the assessee's appeal in the foregoing portion of this order, the stay application vide S.A. No.08/LKW/2024 filed by the assessee has become infructuous. Accordingly, the stay application is dismissed as infructuous.

3. In the result, the appeal vide ITA No.116/LKW/2024 is partly allowed and Stay Application vide S.A. No.08/LKW/2024 is dismissed for statistical purposes.

Order pronounced in the open Court on 05/08/2024.

Sd/-
[SUDHANSHU SRIVASTAVA]
JUDICIAL MEMBER

Sd/-
[ANADEE NATH MISSHRA]
ACCOUNTANT MEMBER

DATED:05/08/2024

JJ:

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

By order

Assistant Registrar