

| आयकर अपीलीय अधिकरण न्यायपीठ, मुंबई |
IN THE INCOME TAX APPELLATE TRIBUNAL
"G" BENCH, MUMBAI

BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER
&
SHRI RAHUL CHAUDHARY, HON'BLE JUDICIAL MEMBER

M.A. No. 179/Mum/2024
A/o I.T.A. No. 2739/Mum/2023
Assessment Year: 2010-11

Sethia Infrastructure Pvt. Ltd. 701, Central Plaza Daftari Road, Malad (East) Mumbai - 400097 [PAN: AALCS9354B]	Vs	Income Tax Officer -13(2)(1), Mumbai
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)

Assessee by :	Shri Jaiprakash Bairagra & Ms. Rupa Nanda & Shri Tanzil R. Padvekar, A/Rs
Revenue by :	Shri Manoj Kumar Sinha, Sr. D/R

सुनवाई की तारीख/**Date of Hearing** : 23/08/2024
घोषणा की तारीख/**Date of Pronouncement** : 26/08/2024

आदेश/ORDER

PER NARENDRA KUMAR BILLAIYA, AM :

This miscellaneous application by the assessee is directed towards the order of the Tribunal in ITA No. 2739/Mum/2023 for AY 2010-11 by which the appeal filed by the revenue was allowed.

2. The assessee has filed 26 pages of miscellaneous application u/s 254(2) of the Act. The sum and substance of the miscellaneous application can be understood from the following points taken from the said miscellaneous application:-

"i. That the impugned Order dated 10/05/2024 has been passed in gross violation of Rule 29 r.w.r. 18 of the Income Tax Appellate Tribunal Rules, 1963.

ii. That the findings given in the impugned Order are based on incorrect and contrary to facts available on record.

iii. That sufficient opportunity was not provided to the Applicant during the course of Court proceedings after Revenue Department tendered documents of

additional evidence across the Bar when the appeal was called out for hearing on 06/05/2024.

iv. That from the perusal of the Order passed by the CIT(Appeals), it can be seen that the Ld. CIT(Appeals) has not adjudicated all grounds raised in the appeal. CIT(A) has left certain ground open and therefore, these grounds ought to have been adjudicated by this Hon'ble Tribunal in ITA No.2739/M/2023.

v. That this Hon'ble Court has relied on the decision of the Hon'ble Apex Court in VRA Cotton Mills Pvt. Ltd. V/s. Union of India - SLP No.34846/2011. The Applicant was neither confronted nor put to notice regarding reliance on the said decision either before, during or after the Court proceedings.

vi. That the impugned Order in ITA No.2739/M/2023 dated 10/05/2024 has been passed in gross violation of Principles of Natural Justice causing serious prejudice to the Applicant."

3. We have given a thoughtful consideration to the miscellaneous application filed by the assessee. The entire quarrel revolves around the service of notice u/s 143(2) of the Act. The ld. Counsel vehemently stated that no evidence for the service of notice was furnished before the ld. CIT(A) in spite of several reminders and before the Tribunal, the ld. D/R just pointed out that notice has been served by flashing evidence. It is the say of the ld. Counsel for the assessee that such additional evidence should not be accepted by the Tribunal without affording an adequate opportunity to the assessee. The ld. Counsel went on to say that the AO has doctored the evidence and manufacture false evidence.

3.1. The ld. Counsel further stated that an affidavit was prepared and the assessee wanted to file that affidavit after the hearing was completed but the said affidavit was not accepted. Therefore, the Tribunal has grossly violated the principles of natural justice.

4. Firstly insofar as the issue relating to the notice u/s 143(2) of the Act is concerned, this has been dealt by the Tribunal as under:-

"6. Before us, the Ld. DR submitted the following evidences for the issue off/service of the notice under [section 143\(2\)](#) of the Act and the evidences are:

Office of the
Income-Tax Officer, 13(2)(2), Mumbai
Room No. 147, 1st Floor, Aayakar Bhavan,
Mumbai -4000 20
Tel : 022-22120268

No.ITO /13(2)(2)/ 143(2) / 2016-17

Date 19 / 09 / 2016

Notice u/s. 143(2) of the Income Tax Act, 1961

PAN : AALCS9354B

To,
The Principal Officer
M/s Sethia Infrastructure Pvt Ltd
704, Shukra Building, Gaushala Lane
Daftari Road, Malad East, Mumbai - 97.

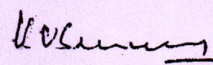
Sir,

There are certain points in connection with the return of income submitted by you for assessment year 2010-11 on which I would like some further information.

You are hereby required to attend my office on 26.09.2016 at 11.00 am either in person or by a representative duly authorized in writing in this behalf or produce or cause there to be produced at the said time any documents, accounts, and any other evidence on which you may rely in support of the return filed by you.


Yours faithfully,




(K. V. SREENIVAS)
Income Tax Officer 13(2)-2, Mumbai

TRUE COPY




प्रवीण कुमार
PRAVIN KUMAR
आयकर अधिकारी-13(2)(1), मुंबई

श्री. वी. श्रीनिवास
Income Tax Officer, 13(2)-2, Mumbai

Reminder-1

4 Date Mailed	5 Time mailed	20 A Despatch charge	EMS SPEED POST
Year Month	Year Month	20 B Office of Origin	
Customs Declaration			
21 Description of contents (For International EMS Speed Post only)			
NO. ITO 13(2)(2)/114/2010-11			
27 Name and Print of the person taking charge of the item			
Notice u/s 143(2) dt. 19/09/2016			
28 Signature			
Notice u/s 143(2) dt. 19/09/2016			
29 Date of delivery			
30 Time of delivery			
Day Hours Minutes			
Sender		Addressee	
8 Name and address of sender		12 Name and address of addressee	
कार्यालय आयकर अधिकारी - 13 (2) (2) 147 आयकर भवन, एम.के. रोड, मुंबई - 400 020. Office of the Income Tax officer - 13 (2) (2) 147 Aayakar Bhavan, M. K. Road, Mumbai - 400 020		M/s. Sethia Infrastructure Pvt. Ltd. Mumbai (E) Mumbai	
9 Sender's postal code		14 Addressee postal code	
		400097	

TRUE COPY



प्रवीण कुमार
PRAVIN KUMAR
आयकर अधिकारी-13(2)(1), मुंबई
Income Tax Officer-13(2)(1), Mumbai

7. In light of the aforementioned evidences it cannot be said that no notice under [section 143\(2\)](#) of the Act was issued and served upon by the Assessing Officer. Though the attitude of the Assessing Officer in not filing the evidences before First Appellate Authority is not acceptable. It was incumbent upon the Assessing Officer to submit the remand report when his Superior Officer has called for it. The Bench asked the counsel what he has to say on such evidences. The counsel reiterated that the same was not submitted during First Appellate Proceedings, however, appeal may be decided on merits of the case."

4.1. Since the notice u/s 143(2) of the Act is always a part of the assessment record, there is no question of any additional evidence furnished by the AO/D.R.

5. Insofar as the affidavit of the assessee is concerned, the same was purported to be filed after the close of hearing and it is incorrect to say that the Bench asked the Id. Counsel to file an affidavit.

5.1. Further the contention that the Id. CIT(A) has not decided many grounds of appeal before him, is of no use since the appeal before the Tribunal is that of the revenue and the Tribunal was to decide the grievance raised by the revenue in its grounds of appeal and if the assessee was also aggrieved by the order of the Id. CIT(A), then the

assessee should have filed a cross-appeal or cross-objection. The Tribunal could not have gone beyond the plaint i.e., Form-36.

6. In the miscellaneous application, the assessee has relied upon several judicial decisions but each decision has to be considered in the facts of its own. The sum and substance of the contention of the Id. Counsel is that, the Tribunal should recall its order and revisit its decision which, in our considered opinion is not permissible u/s 254(2) of the Act.

7. The claim that the Tribunal has considered some judgment of the Hon'ble Supreme Court which was neither filed by the revenue nor by the assessee, on this point we have to say that the Tribunal has just referred to the decision of the Hon'ble Supreme Court to explain the controversy of "issue and receipt of notice" which has been explained by the Hon'ble Supreme Court in the case referred by the Tribunal. It is not that the decision of the Tribunal is based upon certain decisions which have not been referred during the course of the appellate proceedings, it was just to explain the meaning of "issue and receipt".

8. Considering the contents of the miscellaneous application from all possible angles, what the assessee wants is a review of the decision of this Tribunal, which is not permissible u/s 254(2) of the Act.

9. In the result, miscellaneous application filed by the assessee is dismissed.

Order pronounced in the Court on 26th August, 2024 at Mumbai.

Sd/-
(RAHUL CHAUDHURY)
JUDICIAL MEMBER

Sd/-
(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, मुंबई /DR,ITAT, Mumbai,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Mumbai