

आयकर अपीलीय अधिकरण
कोलकाता 'बी' पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'B' BENCH, KOLKATA**

श्री राजेश कुमार, लेखा सदस्य
एवं
श्री प्रदीप कुमार चौबे, न्यायिक सदस्य
के समक्ष
Before

**SRI RAJESH KUMAR, ACCOUNTANT MEMBER
&
PRADIP KUMAR CHOUBEY, JUDICIAL MEMBER**

**I.T.A. No.: 663/KOL/2024
Assessment Year: 2018-19**

***Allen Laboratories Ltd.....Appellant
[PAN: AACCA 6788 J]***

Vs.

ITO, Ward-10(2), Kolkata.....Respondent

Appearances:

Assessee represented by: Siddharth Agarwal, AR.

Department represented by: P.P. Barman, Addl, CIT, Sr. DR.

Date of concluding the hearing : July 30th, 2024

Date of pronouncing the order : September 12th, 2024

ORDER

Per Pradip Kumar Choubey, Judicial Member:

The instant appeal filed by the assessee pertaining to the Assessment Year (in short 'AY') 2018-19 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the 'Act') by Id. Commissioner of Income-tax (Appeals)-NFAC, Delhi [in short Id. 'CIT(A)'] dated 05.02.2024 arising out of the assessment order framed u/s 143(3)/144B of the Act dated 13.12.2019.

1.1. The brief facts of the case of the appellant are that the assessee being a company, filed its return of income for AY 2018-19 on 17.09.2018 declaring total income of Rs. 1,23,25,350/-. The return of income was processed u/s

143(1) of the Act with an adjustment of Rs. 14,33,889/-. Subsequently, the case was selected for scrutiny and during the proceeding it is observed from information available that the assessee company has entered into a sale agreement with M/s. Rajlakshmi Marketing Pvt. Ltd. (in short 'RMPL') for sale of its properties. It is a case of the assessee that the assessee entered into development agreement on 11.11.2012/25.04.2013 with RMPL to develop all their piece and parcel of land area measuring 2 Bighas 00 Cottahs 01 Ghittacks and 28 Sq. Ft. situated at Mouza Krishnapur, PS. Baguiati, Kolkata in the sharing ratio of 48% of constructed area up to G+3 storied level of building attributed respectively to the owners in proportion to the land owned by each of the owners together with undivided proportionate share in the land attributable respectively and 42% of the constructed area above G+3 storied level of the building attributable respectively. The information also received that as per the copy of registered buyback agreement dated 16.03.2016 for sale of its share of developed property mentioned above, the company sole developed portion of its share area measuring 13417 Sq. Ft. for consideration of Rs. 3,47,92,500/- @ 2500 per Sq. Ft. including five parking places of Rs. 2.50 Lakh each to RMPL and it is further explained that on the said amount, the company paid capital gain tax and filed return of income for AY 2017-18. Based on the above information a notice u/s 133(6) of the Act was issued to RMPL calling for details with reference to property. It is alleged that RMPL filed a reply stating that as per the agreement, it handed over certain properties and the properties mentioned in the as enumerated above were not sold by it. Since RMPL has denied having sold the above properties, the Assessing Officer (hereinafter referred to as ld. 'AO') asked specifically from the assessee to produce explanation with reference to sale of properties. It is further case of the assessee that on verification of the information available on ITBA portal, there was no compliance from the assessee and accordingly, ld. AO assumed that the company has no explanation. Accordingly, the assessment is proposed to complete treating sale consideration received on sale of above properties totalling to Rs. 1,38,72,700/- as short-term capital gain. It is also in the assessment order that the assessee has also been specifically asked to produce the complete details of manufacturing defect and

GST difference claim of Rs. 61,64,436/- debited to profit and loss account for which also there is no explanation from the assessee and accordingly, the same has been disallowed and brought into tax. The said order has been challenged by the assessee before the ld. CIT(A) wherein also the case of the assessee has been dismissed.

Being aggrieved and dissatisfied with the impugned order, the present appeal has been preferred.

1.2. The ld. Counsel for the assessee challenges the impugned order thereby submitting that ld. CIT(A) was not justified in proceeding in haste without providing reasonable opportunity to explain clarification which is sought vide letter dated 27.12.2023. He has further challenged that ld. CIT(A) was not justified in confirming the addition of Rs. 1,38,72,700/- made under the head 'short-term capital gain'. The ld. Counsel for the assessee further argued that appellant has filed several books of papers before ld. CIT(A) and asked him to admit it as according to him the papers which were sought to be filed by the assessee were and are the essential piece of evidence for just decision of the case. The prayer of the ld. Counsel for the assessee is that ld. CIT(A) has erred in disallowing the assessee to brought the papers by way of additional evidence only on this ground that appellant/assessee has no reasonable explanation that why not the same could not be filed before ld. AO. Ld. Counsel for the assessee herein before us, filed an affidavit thereby submitting that the notice issued u/s 142(1) of the Act dated 30.03.2021 issued by the ld. AO in course of assessment proceedings could not be complied as the entire country at the relevant time was under the grip of COVID pandemic and the staff of the company were not attending the office. The sole submission of the ld. Counsel for the assessee is that he should be given an opportunity to place the entire papers before ld. CIT(A) to place his case as all the papers are the essential piece of evidence.

1.3. The ld. D/R supports the impugned order.

2. The sole argument of the ld. Counsel for the assessee is that the appellant should be given an opportunity to place his entire evidence which

has been refused by the ld. CIT(A) in the course of appellate proceedings. As per the submission of the counsel that all the papers are relevant for the just decision of the case. In this context, we have perused the order of ld. CIT(A) and find that before ld. CIT(A) the assessee has submitted paperbook which is as follows:

Sl. No.	Nature of Documents	Annexure	Page No.
A.	Petition of Condonation of delay along with annexures	A	1 to 9
B	Re:Ground No. 2		
1.	Copy of Development Agreement and PDA dated 25.04.2013 with Developer	B1	10 to 28
2.	Copy of Development Agreement and PDA dated 25.04.2013 with Developer	B2	29 to 75
3.	Copy of Buy back Agreement for sale	B3	76 to 82
4.	Possession Certificate dated 01.02.2018 issued by the Developer	B4	83 to 84
5.	ITR Acknowledgment, final account and Tax Audit Report for the relevant assessment year along with Possession Certificate	C	85 to 99
6.	(a) Copy of Assessment Order dated 20.04.2023 (AY 2017-18)	D1	100 to 116
	(b) Copmputation of Income (AY 2017-18) along with allocation sheet at details of payment received from Developer	D2	117 to 143
7.	Re: Ground No. 3		
	Debit Notes, indemnity Bonds, Final accounts of the parties:-		
	1. Allen Healthcare Co.Ltd	E1	121 to 143
	1. Allen's Industries limited	E2	143A to 153
	1. Emmars Perk Allen Pvt Ltd	E3	153A to 170

2.1. We have perused the ld. CIT(A)'s order and find that ld. CIT(A) has refused the above papers filed by the assessee by stating thus:

“8.4 However, there is no compliance from the appellant in response to the above notice. Therefore, it is evident that the appellant has no explanation with regard to justification for non-submission of information / documents before the assessing officer, since the appellant had not given such justification though specifically called for as such, the information submitted before the first appellant authority becomes additional evidence as per rule 46A of the Income Tax rules, 1962. In the absence separate application under Rule 46A of Income Tax Rules, 1962 and also in the absence of justification with regard to submission of additional evidence before the first appellate authority with regard to additional evidence, which were not submitted before the assessing officer, the additional evidence submitted before the first appellant authority, is not acceptable. In this regard, let us examine the following case laws.”

2.2. Before us, the assessee has filed an affidavit which is according to us is essential to reproduce herein below:

“I, Dr. Gour Pada Sarkar, son of Late Kunja Behari Sarkar, aged about 79 years, by religion Hindu, residing at G P House, FD-285, Salt Lake City, Sector 3, Kolkata -700106 do hereby solemnly affirm and state as follows-

- 1. That I am one of the directors of M/s Allen Laboratories Ltd. and, as such, I am competent to swear this affidavit on behalf of the said company.*
- 2. That the notice issued u/s 142(1) dated 30.03.2021 issued by the A.O in the course of assessment proceedings for AY: 2018-19 could not be complied with since the entire country at the relevant time was under the grip of covid pandemic and the staff of the company were not attending office.*
- 3. That the Ld. CIT(A) issued notice seeking certain clarifications on 27.12.2023 through email fixing the dated of hearing on 11.01.2024 and no physical copy of notice was received.*
- 4. That the accountant of the assessee who is entrusted with the task of accessing the email of the assessee company was on sickness leave during the relevant time. As such, the assessee company had no knowledge of such notice.*
- 5. That because of the above genuine reasons, no compliance could be made.*
- 6. That I give an undertaking that proper compliance shall be made in case the abovementioned case is restored back to the lower authorities by the Hon’ble Tribunal.*
- 7. That the facts stated in para 1 to 5 are true to the best of my knowledge and belief and paragraph 6 is an undertaking given by me.”*

2.3. It is important to mention here that ld. AO has also passed an order on account of no compliance from the assessee which is apparent from the ld. AO’s order which is as such—

“Accordingly, a show cause notice was issued on 18.04.2021 and was duly served on assessee through its official e-mail. There is no compliance from the assessee till date and hence, presumed that the assessee has no objection for proposed addition. As a result, it is presumed that the assessee has no explanation to submit. As the onus to prove the contrary vests with the assessee and it did fall to do so, the issues raised in show cause notice are treated as correct. Accordingly, the assessment is completed as per show cause notice issued above. The sum payable/refundable of any amount due on the basis of the assessment is determined and interest u/s 243A, 243B & 243C of the Act are charged as per the demand notice issued.”

2.4. Since before the Id. AO, the order was also passed on account of non-compliance from the assessee. Before Id. CIT(A), the assessee has filed papers that has been refused by the Id. CIT(A) only on this ground that there is no separate application under Rule 46A of the Income Tax Rules, 1962 and also in the absence of justification with regard to submission of additional evidence, we are of this view that assessee should be given an opportunity to place his entire papers which he sought to place before the Id. CIT(A). Accordingly for the interest of justice the assessee has been given an opportunity to place all his papers which he sought to be placed and which the assessee has already filed before Id. CIT(A). Id. CIT(A) is hereby directed to consider the papers by way of additional evidence, and thereafter, will pass a fresh order. Accordingly, order of the Id. CIT(A) is hereby set aside, case is remanded back to Id. CIT(A) for fresh decision.

3. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 12th September, 2024.

Sd/-

[Rajesh Kumar]

Accountant Member

Sd/-

[Pradip Kumar Choubey]

Judicial Member

Dated: 12.09.2024

Bidhan (P.S.)

Copy of the order forwarded to:

- 1. Allen Laboratories Ltd., C/o Subash Agrawal & Associates, Advocates, Siddha Gibson, 1, Gibson Lane, Suite 213, 2nd Floor, Kolkata, West Bengal, 700069.**
- 2. ITO, Ward-10(2), Kolkata.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

//True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata