

आयकर अपीलीय अधिकरण, कोलकाता पीठ, कोलकाता

IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH KOLKATA

Before Shri Rajesh Kumar, Accountant Member and Shri Sonjoy Sarma, Judicial Member

I.T.A. Nos.1371&1815/Kol/2024

Assessment Year: 2012-13

M/s Tropex Suppliers Pvt. Ltd.

(Successor to Ujjawal Mercantile Pvt. Ltd.).....Appellant

113, Netaji Subhash Road,

Kolkata -1.

[PAN:AABCT1459N]

vs.

ITO, Ward-6(4), Kolkata.....Respondent

Appearances by:

Shri Miraj D. Shah, AR, appeared on behalf of the appellant.

Shri S. Dutta, CIT-DR & Pradip Biswas, Addl. CIT- Sr. DR, appeared on behalf of the Respondent.

Date of concluding the hearing : October 28, 2024

Date of pronouncing the order : October 30, 2024

ORDER

Per Sonjoy Sarma, Judicial Member:

Both the captioned appeals are filed by the assessee against the order dated 15.03.2023 of the National Faceless Appeal Centre [hereinafter referred to as 'CIT(A)'] arising out of the assessment order 23.03.2015 and another order dated 26.12.2023 of the CIT(A) arising out of the penalty order dated 28.09.2015 against the assessee. The assessment was framed u/s 143(3) of the Income Tax Act [hereinafter referred to as the 'Act'] dated 23.03.2015 and the penalty proceedings were initiated u/s 271(1)(c) of the Act dated 28.09.2015, which is arising out of the same assessment order dated 23.03.2015.

2. At the outset, the ld. AR stated at the Bench that since the issues involved in both the appeals are arising out of the same assessment order and relating to the same assessee, therefore, they may be heard together and decided on merits of the case. The ld. AR has further stated that ITA No.1371/Kol/2024 is delayed by 404 days and ITA

No.1815/Kol/2024 is delayed by 184 days in filing the appeals before this Tribunal. In this connection, the assessee filed two separate petitions for condoning both the delay. We, after considering the reasons provided in the application filed by the assessee, find that there were sufficient causes for the delay in filing the appeals. Accordingly, we condone both the delay and allow to consider the issues in both the appeals on merits.

3. The ld. counsel has stated that during the assessment proceedings, the Assessing Officer issued summons u/s 131 of the Act to the director of the assessee company and to the directors of the investing companies, which were rendered undelivered by the postal authorities. As a result, the assessment was framed by treating the share capital and share premium amounting to Rs.2,07,47,000/- as unexplained cash credit under the provisions of the Act. Additionally, penalty proceedings u/s 271(1)(c) of the Act were initiated for concealment of the income and furnishing inaccurate particulars of income upon the assessee. The ld. AR argued that since summons were not duly served upon the director of the assessee company as well as to the directors of the investing companies, another opportunity should be provided to the assessee. He requested before the Bench that the matters in both the appeals be remanded back to the Assessing Officer with a direction to examine the issues afresh by allowing the assessee a reasonable opportunity of being heard to present its case. He further contended that the ld. CIT(A) did not examine the issue comprehensively and simply dismissed the appeal. Hence, in the interests of justice, he prayed that the matter may be remanded back to the Assessing Officer. In addition, the ld. AR has also submitted that if the matter in relation to the assessment order u/s 143(3) of the Act is remanded back to the Assessing Officer, consequent to the penalty proceedings u/s 271(1)(c) of the Act arising out of the same assessment order be set aside.

4. On the other hand, the ld. DR supported the decisions rendered by both the authorities below.

5. We, after hearing the submissions of both the parties and examining the materials on record, find merit in the submissions of the ld. AR requesting for remanding back the issue involved in the appeal. Accordingly, we remand back ITA 1371/Kol/2024 to the Assessing Officer with a direction to reissue summons to the director of the assessee company and to the investing companies and to thoroughly examine the issue involved in the appeal, by giving reasonable opportunity to the assessee in order to substantiate its claim. Consequently, the penalty proceedings u/s 271(1)(c) of the Act is also set aside as the penalty does not hold independently. Therefore, ITA No.1371/Kol/2024 is allowed for statistical purposes and ITA No.1815/Kol/2024 has no independent standing following the main appeal and this appeal does not require any separate adjudication. Consequently, both the appeals are allowed for statistical purposes.

6. In the result, both the appeals are allowed for statistical purposes.

Kolkata, the 30th October, 2024.

Sd/-
[Rajesh Kumar]
Accountant Member

Sd/-
[Sonjoy Sarma]
Judicial Member

Dated: 30.10.2024.

RS

Copy of the order forwarded to:

1. M/s Tropex Suppliers Pvt. Ltd.
(Successor to Ujjawal Mercantile Pvt. Ltd.)
2. ITO, Ward-6(4), Kolkata
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches