

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH: CHENNAI

श्री यस यस विश्वनेत्र रवि, न्यायिक सदस्य एवं श्री अमिताभ शुक्ला, लेखा सदस्य के समक्ष
BEFORE SHRI SS VISWANETHRA RAVI, JUDICIAL MEMBER AND
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER
आयकर अपील सं./ITA No.1868/Chny/2024
निर्धारण वर्ष /Assessment Years: 2018-19

Income Tax Officer,
Corporate Ward-6(3),
Chennai.

Vmobo Mobile Private Limited,
74A, Velachery Road,
Guindy,
Chennai-600 032.
[PAN: AACCV9424E]

CO-73/Chny/2024
Assessment Year – 2018-19

Vmobo Mobile Private Limited,
74A, Velachery Road,
Guindy,
Chennai-600 032.
[PAN: AACCV9424E]

Income Tax Officer,
Corporate Ward-6(3),
Chennai.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Assessee by

: G.Mahesh, C.A

प्रत्यर्थी की ओर से /Revenue by

: R.Anita, Addl. CIT

सुनवाई की तारीख/Date of Hearing

: 12.11.2024

घोषणा की तारीख /Date of Pronouncement

: 20.11.2024

आदेश / ORDER

PER AMITABH SHUKLA, A.M :

This appeal vide ITA No.1868 is filed against the order bearing DIN & Order No.ITBA/NFAC/S/250/2024-25/1064747937(1) dated 09.05.2024 of the Learned Commissioner of Income Tax [herein after "CIT(A), National Faceless Appeal Center[NFAC], Delhi, for the assessment years

:- 2 -:

2018-19. Through the aforesaid appeal vide ITA No.1868 the revenue has challenged order u/s 250 dated 09.05.2024 passed by NFAC, Delhi. The assessee has challenged the aforesaid appeal of the revenue through CO.73 Supra.

2.0 Through the aforesaid appeal the revenue has contested the order of Ld. CIT(A) with reference to the relief accorded. The assessee has filed cross objections supporting the order of Ld. CIT(A). The principal controversy in the revenue's appeal revolves around the relief of Rs.2,40,18,712/- given by the Ld. CIT(A). It is the case of the revenue that the relief has been accorded by considering additional evidences filed before him and also that the same per se were not sufficient to justify their allowance u/s 37(1) of the act. The revenue has also contested the decision of Ld. CIT(A) to accord relief placing reliance on the fact that it was allowed by the Ld. AO in AY-2017-18 invoking the principles of consistency. The Ld. DR accordingly pleaded that the matter may be restored back to the file of the Ld. AO for readjudication of the matter de novo after considering all the details filed by the assessee. The Ld. AR for the appellant assessee through its CO has argued that the Ld. AO has misinterpreted the nature of business of the assessee and that it was not provided a draft assessment order before the impugned addition. It was contended that the revenue holds a fallacious view that the assessee had filed any additional evidences before the Ld. CIT(A) and that those filed were actually clarificatory submissions not falling into the category of additional evidences as mandated u/s 46A. The Ld. Counsel of the assessee has also countered that office of Ld.CIT(A) is

:- 3 -:

an extension of Ld. Assessing Officer and being fully empowered had verified details and explanation submitted by the assessee during appellate proceedings before him. The Ld. Counsel for the assessee admitted before us that the impugned ledger extracts at page-10 to 25 of its paper book, based upon which relief was accorded by Ld. CIT(A) was provided to him during appellate proceedings only. The Ld. Counsel also admitted before us that save for the said ledgers it had not provided any supporting bills and vouchers to the Ld. First Appellate Authority.

3.0 We have considered rival submissions in the light of material available on records. In the assessment order the Ld. AO noted that the assessee had incurred expenditure Rs.2,40,18,712/- under the head sales promotions qua sales of Rs.9,53,47,303/-. The Ld. AO queried the assessee to justify allowance of this expenses. Contents of page-3 of assessment order shows that the assessee sought for adjournments on couple of occasions which were accorded. In the absence of any justification or submission coming from the assessee the Ld. AO proceeded to disallow assessee's claim of expenses. While doing so, he relied upon judicial pronouncements delivered by Hon'ble Gujarat Higher Court as well as by Hon'ble Apex Court. It is an undisputed and admitted fact of the case that the assessee had provided copies of ledger extracts before the Ld. First Appellate Authority for the first time. There is sufficient force in the arguments of Ld. Counsel for the assessee that the Ld. CIT(A) is an extension of the assessing officer and empowered to entertain evidences and details during assessment proceedings. There cannot be any arguments to this hypothesis. However, the fact remains that a quasi-judicial authority like CIT(A) is also bound to follow the rules and procedures prescribed for its

:- 4 -:

functioning. Rule 46A of IT rules r.w.s 250 of IIT Act empower the CIT(A) to admit evidences including additional evidences, during appeals before him, subject to the condition that it will have to give the AO an opportunity of being heard qua the impugned evidences. This rule becomes more pronounced when the AO had asked for the impugned details / evidences and the assessee had failed to file the same. It is an undisputed fact of the case that the appellant assessee had not filed the requested evidences before the AO and the Ld. CIT(A) had accorded relief on the basis of evidences / details filed before him.

4.0 This brings us to the next controversy as to whether the evidences / details filed by the assessee before the Ld. CIT(A) would constitute “additional evidences” under Rule-46A or are mere clarificatory submissions as claimed by the assessee. Upon consideration, we note that clarificatory submissions are always in the nature of an extension of some original submissions. Thus in this case had assessee filed some original evidences or the details before the AO and had merely attempted to tender some clarifications to the CIT(A), its arguments of filing mere clarificatory submissions could have been acceptable. But that is not the case at hand. It is an admitted and undisputed fact that the assessee had not made any original submissions before the AO. Consequently when the original was not there, there cannot be any case for any clarification thereof. Thus it is crystal clear that the details / submissions filed by the assessee before the Ld. CIT(A) squarely fall within the mischief of being additional evidences under rule 46A. That being so, the protocol prescribed in the impugned rule would have to be followed without any exceptions.

:- 5 -:

5.0 Coming to the argument of the assessee that it had filed some details before the AO electronically but because of some technical glitch it could not be received by the Ld. AO, we have noted that the same appears to be merely an unverified statement which is not supported by any demonstrative evidence. One golden rule of digital environment is that whenever an action is done by a person on an electronic platform there always gets created a digital footprint. This digital footprint is nearly indestructible and is a permanent creation. The argument of the assessee of having provided details to the AO, electronically, without any supporting document thus remains a mere unsubstantiated statement. In the absence of an evidence a presumption qua any details / evidences not being submitted to the AO can be safely drawn.

6.0 We have also noted that the order of first appellate authority also suffers from error of an adjudication made on the basis of insufficient evidences. The justification of expenses claimed by the assessee has been accepted merely on the basis of ledger extracts provided during appellate proceedings. The Ld counsel for the assessee admitted that no bills or supporting vouchers were provided to the CIT(A) . This goes on to allude towards a case of deficient adjudication not expected from a senior officer of the revenue department.

7.0 similar is the case of reliance placed by Ld first appellate authority on the fact that because the AO has allowed impugned expenses in following year the same deserves allowance in this year also in view of principle of consistency. It is trite law that principle of res judicata do not apply to direct taxes as each year is deemed to

:- 6 -:

have its own distinct facts of case which can always distinguish decision of different years.

8.0 We are therefore of the view that there exists sufficient force in the arguments of the revenue qua violation of natural justice enshrined in provisions of Rule 46 A by the Ld CIT (A) . We have also noted that the arguments put forth by the appellant assessee in its CO are far from convincing and not supported by evidence on records. We have noted that the Ld AO had during assessment proceedings asked for submission of details and evidence from the assessee to justify its claim of expenses of Rs.2,40,18,712/- and the same was not provided. The assessing officer is the first statutory authority empowered to examine issues qua determination of correct taxable income of a tax payer. Hon'ble Apex court in judicial pronouncement Tin Box Company cited at 249 ITR 216 has laid this ratio. Accordingly we are of the view that ends of justice would be met if the matter is restored to the AO for readjudication. Therefore we set aside the order of lower authorities and direct the Ld AO to do the assessment De Novo by passing a speaking order after giving due opportunity to the assessee. The assessee shall comply with all the notices of the AO and provide all requested details. Any noncompliance shall be adversely viewed. Accordingly all the grounds of appeal raised by the appellant revenue are allowed for statistical purposes. Accordingly, the CO filed by the appellant assessee is dismissed.

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9.0 In the result the appeal filed by the appellant revenue vide ITA no 1868 is allowed for statistical purposes and the appeal filed by the appellant assessee vide CO number 73 is dismissed.

Order pronounced on 20th, November-2024 at Chennai.

Sd/-

(यस यस विश्वनेत्र रवि)

(SS VISWANETHRA RAVI)

न्यायिक सदस्य / Judicial Member

Sd/-

(श्री अमिताभ शुक्ला)

(AMITABH SHUKLA)

लेखा सदस्य /Accountant Member

चेन्नई/Chennai, दिनांक/Dated: 20th, November-2024.

KB/-

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT - Chennai
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF