

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH: 'G': NEW DELHI)**

**BEFORE S RIFAUZ RAHMAN, ACCOUNTANT MEMBER
AND
SHRI SUDHIR PAREEK, JUDICIAL MEMBER**

**ITA No:- 5865/Del/2018
(Assessment Year- 2014-15)**

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| Universal Polychem India Pvt. Ltd., H-1324, DISDC Industrial Area, Narela, New Delhi-110040. | Vs. | Asst. CIT. Circle 27(1), New Delhi. |
| PAN No: AAACU7033J | | |
| APPELLANT | | RESPONDENT |

Assessee by : Dr. Rakesh Kumar, Adv. &
Shri Sanat Kapoor, Adv.
Revenue by : Shri Vivek Kumar Upadhyay, Sr. DR

Date of Hearing : 27.08.2024
Date of Pronouncement : **29.11.2024**

ORDER

PER SUDHIR PAREEK, JM

This appeal is preferred by the Assessee / Appellant against the order of the Learned Commissioner of Income Tax (Appeals)-9, New Delhi, [in short, referred hereinafter as "Ld. CIT(A)] dated 01.06.2018 for the Assessment Year ("A.Y.") 2014-15.

1.1 The assessee has raised the following grounds of appeal:

“1. That the addition of Rs. 11,00,000/- made by AO and sustained by the Commissioner of Income Tax (Appeals) is illegal and bad in law.

2. That in view of the facts and circumstances of the case, the CIT (Appeals) has grossly erred on facts and in law in upholding the addition of Rs. 11,00,000/- made by the AO U/s 68. This addition may kindly be deleted.

3. That the assessee was prevented by reasonable and sufficient cause for not producing the documents before the AO during the course of assessment proceedings. This was because Mr. Subodh Kumar Sharma was not keeping good health and was on leave. Necessary evidence will be filed before the Hon'ble Court.

4. that the AO also did not grant sufficient time and opportunity to the assessee to produce the required documents before the AO to prove its case with regard to addition of Rs. 11,00,000/-.

5. That the assessee signed and executed an application under Rule 46A of the IT Rules and instructed its counsel to file it with the CIT(A). However the Counsel did not file it before CIT(A) due to his laxity.

6. That the CIT(A) has grossly erred on facts and in law in not admitting the evidences filed by the assessee during the course of hearing.

7. That the disallowance made / upheld and the observations made are unjust, unlawful and based on mere surmises and conjectures. The additions / disallowance made cannot be justified by any material on record and in any case they are excessive.

8. that the explanation given and the evidence produced, material placed and available on record has not been properly considered and judicially interpreted and the additions made cannot be justified in view of the said material and explanation.

9. That on the facts and circumstances of the case, no fault can be attributed to the appellant. The appellant even submitted that Mr. Subodh Kumar Sharma can be produced now before the CIT(A) but the same was ignored by the CIT(A).

The above objections are without prejudice to each other, the assessee craves leave to alter, amend or withdraw all of any objections herein or add any further grounds as may be considered necessary either before or during the hearing.

2. Brief facts of the case are that during the year under considering the assessee was engaged in the business of Manufacturing of PVC Compound. The assessee has filed return of income on 28.11.2014 declaring total income at Rs. 56,07,060/-. Thereafter the case was selected for scrutiny and processed U/s 143(1).

3. Heard rival submissions and carefully perused the record available with us.

4. Reiterating the grounds of appeal, the Ld. AR submitted that *“the assessee was prevented by reasonable and sufficient cause for not producing the documents before the AO during the course of assessment proceedings. This was because Mr. Subodh Kumar Sharma was not keeping good health and was on leave. He further submitted that the assessee signed and executed an application under Rule 46A of the IT Rules and instructed its counsel to file it with the CIT(A). However the Counsel did not file it before CIT(A) due to his laxity.”*.

5. In the course of hearing, the Ld. AR submitted application under Rule 29 of the ITAT, Rules, by stating that the addition was made since the assessee could not submit the documents before the Ld. AO to confirm identity, creditworthiness and genuineness of the transaction and it was also explained before the lower authorities that Mr. S.K. Sharma could not submit the documents before the Ld. AO, as he was not keeping good health and the Ld. CIT(A) did not take these documents on record since they constituted additional evidence. In this regard, it is also submitted that non-filing of the said documents before the Ld. AO as well as application under Rule 46A before the Ld. CIT(A) is non intentional due to circumstances beyond the control of the assessee / appellant.

6. Per contra, the Ld. DR contended that appellant has not filed any cogent- reason with its prayer to admit these evidences under Rule 29.

7. We have carefully considered the rival submissions and the material available on record. Upon considering the submissions of the both sides, we note that the assessee has raised the contentions about the denial of reasonable, adequate and effective opportunity

of for presenting evidence and documents before the AO. Additionally, the assessee's contention regarding the laxity in filing the Rule 46A application needs to be addressed in the interest of justice

8. So, looking to the overall facts and circumstances, requirement of proper verification and in the interest of justice, we find it appropriate to restore the matter to the file of the Ld. Assessing Officer with the direction to pass order after affording reasonable, adequate and effective opportunity of being heard in the terms mentioned hereinbefore and hence the appeal of the assessee is deserves to be allowed.

9. Consequently, we set aside the order of the Learned CIT(A) and remitted the matter back to the AO with the direction to decide the matter afresh after giving proper, effective and reasonable opportunity of being heard. The appeal is allowed as indicated above.

10. Consequently, appeal of the assessee is allowed as indicated above for statistical purpose.

Order pronounced in the Open Court on 29.11.2024

Sd/-
(S. RIFAUH RAHMAN)
ACCOUNTANT MEMBER

Sd/-
(SUDHIR PAREEK)
JUDICIAL MEMBER

Dated: 29/11/2024.

Pooja/-

Copy forwarded to:

Appellant
Respondent
CIT
CIT(Appeals)
DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

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| Date of dictation | Direct 23.10.24 |
| Date on which the typed draft is placed before the dictating Member | 23.10.24 |
| Date on which the typed draft is placed before the Other Member | |
| Date on which the approved draft comes to the Sr. PS/PS | |
| Date on which the fair order is placed before the Dictating Member for pronouncement | |
| Date on which the fair order comes back to the Sr. PS/PS | |
| Date on which the final order is uploaded on the website of ITAT | |
| Date on which the file goes to the Bench Clerk | |
| Date on which the file goes to the Head Clerk | |
| The date on which the file goes to the Assistant Registrar for signature on the order | |
| Date of dispatch of the Order | |