

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "D" BENCH

**Before: Shri T.R. Senthil Kumar, Judicial Member
And Shri Narendra Prasad Sinha, Accountant Member**

**ITA Nos. 2717 & 1795/Ahd/2016
Asst. Years. 2013-14 & 2015-16**

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| Kokila Cotton Export Ltd. 6, New Karnavati Society, B/h. Lal Bungalow, Off C.G. Road, Ahmedabad-380009 PAN: AADCK1526D (Appellant) | Vs | The A.C.I.T., Circle-2(1)(2), Ahmedabad (Respondent) |
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**ITA No. 755/Ahd/2018
Assessment Year 2014-15**

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| Kokila Cotton Export Ltd. 6, New Karnavati Society, B/h. Lal Bungalow, Off C.G. Road, Ahmedabad-380009 PAN: AADCK1526D (Appellant) | Vs | The DCIT, Circle-2(1)(2), Ahmedabad (Respondent) |
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**Assessee Represented: Shri Mehul K. Patel, A.R.
Revenue Represented: Shri Rignesh Das, Sr.D.R.**

Date of hearing : 27-11-2024
Date of pronouncement : 29-11-2024

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

These three appeals are filed by the Assessee as against separate appellate orders dated 12.08.2016, 18.11.2018 and 13.06.2018 passed by the Commissioner of Income Tax (Appeals)-2, Ahmedabad arising out of the assessment orders passed under section 143(3) and 144 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Years 2013-14, 2014-15 and 2015-16.

2. Asst. Years 2013-14 and 2015-16 are exparte appellate orders wherein the assessee through its Director and Chartered Accountant filed a Notarized Affidavit explaining that the assessment order is also an exparte assessment for the Asst. Year 2015-16. Since during the original assessment proceedings, the assessee company was facing liquidity crisis, financial problems and legal proceedings for the default in repayment of loans to State Bank of India which has resulted in attaching its immovable property and bank accounts of the assessee company. Further legal proceedings before Debts Recovery Tribunal which has come to an end by one time settlement proceedings with the State Bank of India and No due Certificate was issued by SBI on 13-12-2018. Thus assessee could not produce all relevant materials before the Assessing Officer and Ld. CIT(A)'s order also happen to be an exparte appellate order. Therefore the assessee is filing all the relevant documents by invoking Rule 29 of the ITAT Rules, 1963 namely ledger accounts, bank advice, invoice, sales contract, debit notes, Chartered Accountant Certificate in Form 15CA/15CB on

foreign agents commission paid, Bank statements and details of all expenses. In support of Rule 29 application, the assessee relied upon Jurisdictional High Court judgment in the case of *Pari Mangaldas Girdhardas Vs. CIT* reported in (1977) 6 CTR 647 (Guj.). Thus Ld. Counsel requested for admission of additional evidences under Rule 29 of the ITAT Rules in the interest of justice and fair play.

3. Regarding Asst. Year 2014-15, Ld. Counsel submitted that though it is a contested matter before Ld. CIT(A), but the documents relied upon before him was not fully appreciated by Ld. CIT(A) and thereby confirmed the additions. Therefore Ld. Counsel requested one more opportunity be given to the assessee to demonstrate its case before the Assessing Officer along with the two assessment years.

4. Ld. Sr. D.R. Shri Rignesh Das appearing for the Revenue has no serious objection in setting aside the matter back to the file of Assessing Officer for considering the additional evidences filed by the assessee.

5. We have heard rival submissions at length and perused the materials placed before us. The main ground in these appeals is disallowance made u/s. 40(a)(ia) of the Act on account of non-deduction of TDS u/s. 195 of the Act for the commission payments made to foreign agents. It is undisputed fact that the assessee company is engaged in export business for the earlier assessment

years as well as subsequent assessment years and the commission expenses paid to foreign agents is recurring in nature.

5.1. During the appellate proceedings, the assessee company due to its financial problems and loan recovery proceedings initiated by State Bank of India could not participate before the Appellate Authority as well as before the Assessing Officer. However the relevant details are now placed before us namely ledger accounts, bank advice, invoice, sales contract, debit notes, Chartered Accountant Certificate in form 15CA/15CB on foreign agents commission paid, Bank statements and details of all expenses by way of invoking Rule 29 of the ITAT Rules for admission of new documents.

6. It is well settled principle of law by the Jurisdictional High Court in the case of *Pari Mangaldas Girdhardas* (cited supra) for invoking Rule 29 following seven principles to be taken note as held as follows:

"48. The principles, which emerge from the decided cases are, as earlier stated, applicable even in relation to the exercise of power under the first part of Rule 29 and accordingly, in the context of exercise of such power, the following principles should be borne in mind:

(1) The discretion given to the Tribunal to receive and admit additional evidence is not an arbitrary one but is a judicial one circumscribed by the limitations specified in Rule 29;

(2) The Tribunal has the power to allow additional evidence if it requires such evidence to enable it to pass orders, that is to say, when it finds that there is any lacuna or defect which needs to be filled up so that it could pronounce an order;

(3) The Tribunal has the power to allow additional evidence also if it requires such evidence for any other substantial cause, that is to say, even in cases where the Tribunal finds that it is able to pronounce judgment on the state of the record as it is, it may still allow additional evidence to be brought on record if it considers that in the interest of justice something which remains obscure should be filled up so that it can pronounce its order in a more satisfactory manner

(4) Such requirement in either case must be of the Tribunal and it will not arise ordinarily unless some inherent lacuna or defect becomes apparent on an examination of the evidence and, therefore, the legitimate occasion for the exercise of discretion under Rule 29 is not before the appeal is heard but when on an examination of evidence as it stands, some inherent lacuna or defect becomes apparent;

(5) such defect may be pointed out by a party or a party may move the Tribunal to supply the defect or the Tribunal itself may act suo motu in the matter;

(6) if the additional evidence is allowed to be adduced contrary to the principles governing the reception of evidence, it would be a case of improper exercise of discretion and the additional evidence so brought on record will have to be ignored; and

(7) a fortiori, if the decision not to allow additional evidence is arrived at unreasonably or capriciously or by ignoring relevant facts and adopting an un-judicial approach, then the exercise of discretion would, in law, be wrongful and improper."

6.1. Respectfully following the above dictum laid by Jurisdictional High Court, the assessee demonstrated before as the financial crisis faced from State Bank of India and the various orders passed by Debts Recovery Tribunal from time to time which are placed on record from Page Nos. 16 to 49 of the Paper Books. Further the Notarized Affidavit filed by the Director and assessee's Chartered Accountant explained the above positions. Thus we are satisfied

with the explanations offered by the assessee of not producing the documents before lower authorities. In the above circumstances, we deem it fit to entertain the additional documents filed under Rule 29 of ITAT Rules. However the appellate orders being exparte orders, in the above circumstances without expressing our views on merits of the case, we deem it fit to set aside the matter to the file of Jurisdictional Assessing Officer to look into the additional documents filed before us and pass assessment orders in accordance with law by giving proper opportunity of hearing to the assessee. Needless to say, the assessee should cooperative by filing all relevant materials before the Assessing Officer to decide the case on merits.

7. In the result, **the appeals filed by the Assessee are allowed for statistical purposes.**

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| Order pronounced in the open court on 29-11-2024 |
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Sd/-
(NARENDRA PRASAD SINHA)
ACCOUNTANT MEMBER

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

Ahmedabad : Dated 29/11/2024

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)

5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद