

आयकर अपीलीय अधिकरण, कोलकाता पीठ, कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH KOLKATA

Before Shri Sonjoy Sarma, Judicial Member and Shri Rakesh Mishra, Accountant Member

I.T.A. No.19/Kol/2024
Assessment Year: 2009-10

Damodar Distributors Pvt. Ltd.....Appellant

4th Floor, Room No.401A, 154,
Lenin Sarani, Kol-700013.
[PAN: AACCD6184D]

vs.

ACIT, Central Circle-1(2), Kolkata..... Respondent

Appearances by:

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

Shri Rajat Datta, Sr. DR, appeared on behalf of the Respondent.

Date of concluding the hearing : December 04, 2024

Date of pronouncing the order : December 05, 2024

आदेश / ORDER

Per Sonjoy Sarma, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 05.12.2023 of the Commissioner of Income Tax (Appeals)-20, Kolkata [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. The brief facts of the case are that the assessee filed its return of income declaring an income of Rs.2,665/- for assessment year 2009-10. The Assessing Officer stated that an information was received from DDIT(Inv.), Unit-4(1), Kolkata regarding statement from various entry operators who utilised bogus entry operators including proprietary/partnership concerns who deposited cash and issued cheques on demand of its clients. The assessee was identified as one of the beneficiaries. In this regard, necessary approval was obtained and notice u/s 148 of the Act was issued to the assessee on 30.03.2016. In response to the notice u/s 148, the assessee filed its return 28.04.2016.

The assessee requested the Assessing Officer to supply reasons recorded for the reopening of the assessee through a letter dated 02.05.2016 and the reasons recorded was duly provided by the Assessing Officer. Subsequently, notices u/s 143(2) and 142(1) of the Act were issued and the counsel of the assessee appeared and submitted relevant details as was required, however, the Assessing Officer was not satisfied with the submissions and made an addition of Rs.40,00,000/- u/s 68 of the Act.

3. Dissatisfied with the above order, the assessee filed an appeal before the ld. CIT(A), where, the ld. CIT(A) dismissed the appeal of the assessee as the assessee did not respond to the notices issued and confirmed the addition of Rs.40,00,000/-.

4. Aggrieved by the order of the ld. CIT(A), the assessee filed an appeal before this Tribunal arguing that the assessment order was bad in law as the Assessing Officer while framing the assessment order failed to dispose of objections raised by the assessee against the reopening of the assessment order u/s 148 of the Act, which is a violation of procedural requirement as held by the Hon'ble Supreme Court in GKN Driveshaft (India) Limited Vs. ITO (2003) 259 ITR 19 and the ld. CIT(A) did not properly examine the merit of the case since the order was passed ex parte.

5. On the other hand, the ld. DR objected to such prayer made by the assessee stating that the assessee has failed to represent its case properly before the ld. CIT(A), therefore, the ld. CIT(A) has no other option but to decide the appeal on the materials available on record by sustaining the order of the Assessing Officer. Therefore, there is no infirmity in the order passed by the ld. CIT(A) and the appeal of the assessee needs to be dismissed in limine.

6. We, after hearing the rival submissions and perusing the materials available on record, find that the Assessing Officer has indeed failed to dispose of the assessee's objections against the reopening of the assessment u/s 148 of the Act and the said reasons for reopening were never confronted to the assessee till the completion of the reassessment proceedings in spite of specific request and also there was no comment in the body of the assessment order in this regard. Therefore, we find that this is a procedural lapse which needs to be sorted out by remanding back the issue. Accordingly, we remand the matter to the file of the Assessing Officer with a direction to re-examine the issue after addressing the assessee's objections by providing a reasonable opportunity to the assessee to present its case. We also direct the assessee to fully cooperate with the Assessing Officer and comply with the notices issued in de novo proceedings without any fail.

7. In terms of the above, the appeal of the assessee is allowed for statistical purposes.

Kolkata, the 5th December, 2024.

Sd/-

[Rakesh Mishra]

लेखा सदस्य/Accountant Member

Sd/-

[Sonjoy Sarma]

न्यायिक सदस्य/Judicial Member

Dated: 05.12.2024.

RS

Copy of the order forwarded to:

1. Damodar Distributors Pvt. Ltd
2. ACIT, Central Circle-1(2), Kolkata
3. CIT (A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches