

आयकर अपीलीय अधिकरण, "ई" खंडपीठ मुंबई
INCOME TAX APPELLATE TRIBUNAL,MUMBAI-"E",BENCH
सर्वश्री राजेन्द्र, लेखा सदस्य एवं संदीप गोसांई, न्यायिक सदस्य
Before S/Sh. Rajendra,Accountant Member & Sandeep Gosain,Judicial Member
आयकर अपील सं./ITA No.802 /Mum/2013, निर्धारण वर्ष/Assessment Year-2009-10

ACIT-19(3) Room No.305, 3 rd Floor Piramal Chambers, Parel Mumbai-400 012.	Vs.	M/s. Elco Panipuri Centre Shop No.2A, Elco Arcade Hill Road, Bandra (W) Mumbai-400 050. PAN:AABFE 3742 N
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(अपीलार्थी /Assessee)

(प्रत्यर्थी / Respondent)

निर्धारिती ओर से/Assessee by

:Sh. Mandar Vaidya -AR

राजस्व की ओर से/ **Revenue by**

:Sh. Sachidanand Dubey-DR

सुनवाई की तारीख/ Date of Hearing : 16- 11 -2015

घोषणा की तारीख / Date of Pronouncement : 01.01.2016

आयकर अधिनियम,1961 की धारा 254(1)के अन्तर्गत आदेश

Order u/s.254(1)of the Income-tax Act,1961(Act)

लेखा सदस्य राजेन्द्र के अनुसार PER RAJENDRA, AM-

Challenging the order dated 29.11.2012 of CIT(A)-30, Mumbai the Assessing Officer (AO) has filed the present appeal.

Assessee-firm engaged in the business of serving fast food and catering filed its return of income on 27.9.2009 declaring total income of Rs.41.70 lacs.The AO completed the assessment on 19.12.11 determining the income of the assessee at Rs.90,72,180/-.

2.The effective Ground of appeal is about deleting the addition of Rs.45.41 lacs.During the assessment proceedings the AO found that a survey operation u/s.133A of the Act was conducted at the business premises of the assessee on 6.2.2009, that the statement u/s. 131 of the Act of one of the partners was recorded, that the partners voluntarily offered an additional income of Rs.1.00 crores,that in the statement it was highlighted that the firm had carry forward loss of Rs.50-51 lacs, that a request was made to allow the adjustment against the additional income offered during the course of survey, that at the time of filing of return of income the assessee had adjusted the entire loss of Rs.50.98 lacs, that it failed to offer the balance additional income of Rs.49.01 lacs for taxation.Vide his letter dt.16.11.2011, the AO asked the assessee to explain as to why the additional income of Rs.49,01,290/- should not be brought to tax as it had failed to disclose the same.The assessee vide its letter dt.25.11.2011 filed elaborate explanation.After considering the same,the AO held that the assessee had offered an addition of Rs.1.00 crores over and above the normal regular income, that the offer was based on the papers found and impounded by the survey party,that in its letter,dt. 25. 11. 2011,the assessee had claimed that it had offered sales of Rs.1.00 crores and not additional income,that the assessee had retracted its statement. The AO further held that statement given during the course of survey/search were important piece of evidence, that detraction after a certain period of time was legally impermissible, that the assessee was unable to reconcile the discrepancies pointed out at the time of survey,that it was not a case where the additional income was not offered without examining /verifying the documents,that at the time of filing of return the assessee retracted its statement.Finally, the AO held that an addition of Rs.49.01 lacs had to be made to the income of the assessee (Rs.1.00 crores – 50,98,710 – b/f losses).

3. Aggrieved by the order of the AO, the assessee preferred an appeal before the First Appellate Authority (FAA). Before him, it was argued that the assessee had not claimed any expenditure against the additional income offered. The assessee prepared a Trading and P&L A/c. for the period ending 31.3.2009 without enhancing the sales by Rs.1.00 crores and stated that the GP would be Rs.67.73 lacs, that the net profit would be Rs.5.65 lacs. It was further contended that salary to partners of Rs.6.60 lacs have been claimed for the first time, that if all these factors were considered it would result in net loss of Rs.94.398. The assessee prepared a fresh computation of income after considering Rs.1.00 crores as additional income and pleaded that though the sales had been enhanced by Rs.1.00 crores, but effectively it was as good as additional income offered of Rs.1.00 crores. A comparative chart of GP/MP for various years was furnished by the assessee. After considering the charts filed by the assessee, the FAA held that if the GP was worked out without considering the enhancement of sales of Rs.1.00 crores it would work out to 33.26% as compared to the GP of 34.45% of the preceding year, that there would be slight fall in GP, that if GP was worked out after considering the enhancement of sales of Rs.1.00 crores it would work out to Rs.52.41%, that the enhancement of sale by Rs.1.00 crores was as good as additional income offered of Rs.1.00 crores, that the AO was not justified in holding that the assessee had retracted the statement. FAA further held that there was shortfall in GP by 1.74%. Considering the above he sustained addition to the extent of Rs.3.59 lacs and deleted the balance addition.

4. Before us, the Departmental Representative (DR) stated that the assessee had offered additional income of Rs.1.00 crores during the course of survey, that additional income was offered after the partners of assessee firm had perused the impounded material, that the FAA had not analysed the statements recorded, that he had decided the issue without affording a reasonable opportunity to the AO regarding new claims made before him during the appellate proceedings. The Authorised Representative (AR) supported the order of the FAA. On a specific query by the Bench, he fairly admitted that the AO had no occasion to verify the veracity of charts submitted by the assessee during the appellate proceedings before the FAA, that the claim of expenditure on account of salary to partners were not made before the AO, that the AO had no occasion to verify the claim of purchase of new premises and expenditure incurred with regard to it. Considering the above facts we are of the opinion that the matter needs further verification. So, in the interest of justice, we are restoring back the issue to the file of the FAA who would afford a reasonable opportunity of hearing to the AO. He may hear the assessee also after obtaining comments of the AO. Effective ground of appeal filed by the assessee stands allowed in part.

As a result, appeal filed by the AO stands partly allowed.

फलतः निर्धारिती अधिकारी द्वारा दाखिल की गई अपील अंशतः मंजूर की जाती है.

Order pronounced in the open court on 1st January 2016.

आदेश की घोषणा खुले न्यायालय में दिनांक 01 जनवरी, 2016 को की गई।

Sd/-

(संदीप गोसाईं/Sandeep Gosain)

न्यायिक सदस्य/Judicial Member

मुंबई Mumbai, दिनांक Date: 01.01.2016

व.नि.स. Jv.Sr.PS.

Sd/-

(राजेन्द्र / Rajendra)

लेखा सदस्य/Accountant Member

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. Assessee /अपीलार्थी
2. Respondent /प्रत्यर्थी
3. The concerned CIT(A)/संबद्ध अपीलीय आयकर आयुक्त, 4. The concerned CIT /संबद्ध आयकर आयुक्त
5. DR “ E” Bench, ITAT, Mumbai /विभागीय प्रतिनिधि के खंडपीठ, आ.अ.अधि.मुंबई
6. Guard File/गार्ड फाईल

सत्यापित प्रति //True Copy//

आदेशानुसार/ **BY ORDER,**

उप/सहायक पंजीकार **Dy./Asst. Registrar**
आयकर अपीलीय अधिकरण, मुंबई /ITAT, Mumbai.