

IN THE INCOME TAX APPELLATE TRIBUNAL "D", BENCH KOLKATA
BEFORE SHRI S.S.VISWANETHRA RAVI, JM & DR. A.L.SAINI, AM

आयकर अपील सं./ITA No.1478/Kol/2016

(निर्धारण वर्ष /Assessment Year:2006-07)

M/s Govind Lal Diga, C/o S.L.Kochar, Advocate, 86, Canning Street, Kolkata-700001	Vs.	ITO, Ward-45(2), Kolkata, 3, Govt. Place West, Kolkata-700001
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No.: AACFG 4663 K		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by : Shri Anil Kochar, Advocate
Revenue by : Md. Ghyas Uddin, JCIT

सुनवाई की तारीख / **Date of Hearing** : **13/02/2017**

घोषणा की तारीख/**Date of Pronouncement** **03/03/2017**

आदेश / O R D E R

Per Dr. Arjun Lal Saini, AM:

The captioned appeal filed by the Assessee pertaining to the Assessment Year 2006-07, is directed against the order passed by Id. CIT(A)-21, Kolkata in Appeal No.1256/ITO, Ward-45(2)/CIT(A)-21/Kol/14-15, dated 20.06.2016, which in turn arises out of an order passed by the Assessing Officer (AO) Under Section 143(3) of the Income Tax Act 1961, (hereinafter referred to as the 'Act'), dated 27.11.2008.

2. Brief facts of the case qua the assessee are that the assessee filed its return of income for the A.Y.2006-07 on 31-10-2006 declaring total income of Rs.14,140/-. The case of the assessee was selected for scrutiny and the AO framed the assessment u/s.143(3) making various additions.

3. Aggrieved from the order of AO, the assessee filed an appeal before the Id. CIT(A), who has confirmed the order passed by the AO observing the followings :-

3 The instant appeal was filed on 13.01.2009 in the Office of CIT(A)-XXX, Kolkata. In March 2015, it was transferred to the Office of CIT(C)-11, Kolkata. At Present the jurisdiction over appeal lies with the Office of CIT(A)-21, Kolkata.

The records show that the assessee had filed return of income for A.V. 2006-07 on 31.10.2006 showing income of Rs. 14,140/-. The case was selected for Scrutiny and the assessment proceeding was completed u/s 143(3)(ii) of the Act on 27.11.2008 at the total income of Rs. 3,34,368/-. Notices for the hearing of appeal have been issued and the Ld. AR appeared in the beginning of appeal proceedings and argued the case, written submission have also been filed. However, the relevant records show that there has been no response from the appellant in the recent past. Notices for the hearing of appeal have been issued on 17/09/2009, 12/10/2009, 18/11/2009, 08/02/2010, 05/09/2011, 09/11/2011, 18/12/2012, 04/03/2013, 12/07/2013, 06/09/2013, 16/09/2014, 15/07/2014 and 02/12/2015. In view of this the appeal is decided on the basis of merit and material on record.

It is seen from the records that the appellant's Ld. AR had appeared earlier and filed submission and argued but there has been no response from the appellant or appellant's AR in the recent past especially after the receipt of remand report from the Assessing Officer."

4. Not being satisfied with the order of Id. CIT(A), the assessee is in further appeal before us and has taken the following grounds of appeal :-

1. For that order of the Ld. CIT (A) whereby appeal has been dismissed is wrong, uncalled for and bad on facts and in law.
2. For that the appeal was instituted on 13.06.2009 and there have been various hearings as noted by the Ld. CIT (A) and that with reference to the written submissions and documents produced before the Ld. CIT (A) a Remand Report was called for and there is the rejoinder submitted by the appellant which have not all been considered and relied upon by the Ld. CIT (A) and in this view of the matter the order dismissing the appeal is entirely bad-in-law.
3. For that the Ld. CIT (A) erred in confirming the disallowance of Rs.61,183/- made by the A.O. u/s 40 (a)(ia).
4. For that the Ld. CIT (A) erred in confirming disallowance of Rs.3,600/- on account of depreciation.
5. For that the Ld. CIT (A) erred in confirming disallowance of Rs.12,120/- out of Advertisement expenses.

6. *For that the Ld. CIT(A) erred in confirming addition of Rs.5,72,000/- as undisclosed income on the alleged grounds.*
7. *For that the Ld. CIT(A) erred in confirming addition of Rs.45,951/- on the alleged grounds.*
8. *For that the Ld. CIT(A) erred in confirming addition of Rs.53,176/- made by the A.O. on the alleged ground of unexplained expenditure.*
9. *For that various additions & disallowances made by the A.O. and confirmed by the Ld. CIT (A) proceed on non-consideration the explanations and the evidences adduced by the appellant in the course of appeal proceedings and the rejoinder to the Remand Report which has not been considered.*
10. *For that further grounds of appeal may kindly be allowed to be taken at the time of hearing of the appeal.*

5. In this appeal, the assessee has raised 10 grounds of appeal but at the time of hearing the solitary grievance of the assessee has been confined to ground No.2. The Ground No.3 has not been pressed by the assessee and other grounds raised by the assessee are on merits. **The solitary grievance of the assessee in this appeal is that Id. CIT(A) passed the order without considering the rejoinder/submission of the assessee for remand report.**

5.1 The Ld AR for the assessee has submitted before us that Id CIT(A) called a remand report from the AO and then assessee submitted a rejoinder/submissions, in order to reply the issues of remand report. The Id CIT(A) did not consider at all the rejoinder/submissions of the assessee. It is against the principle of natural justice. Therefore, the Ld AR for the assessee has prayed the Bench to remit the case back to the file of Id. CIT(A) for re-adjudication the case afresh.

6. On the other hand, Ld. DR for the Revenue has agreed with the Id. AR for the assessee to remit the matter back to the file of Id. CIT(A) to re-adjudicate the issue afresh.

7. Having heard the rival submissions, perused the material on record, we are of the view that there is merit in the submissions of the assessee, as the proposition canvassed by Id. AR for the assessee are supported by the facts narrated by him above. As Ld. AR for the assessee has pointed out that Id. CIT(A) did not consider the submissions/rejoinder submitted by the assessee during the appellate proceedings and without considering the reply/rejoinder of the assessee, Id. CIT(A) has passed the order which is against the principle of natural justice. Therefore, we are of the view to remit the case back to the file of Id. CIT(A) to re-adjudicate the issue afresh. Accordingly, we remit the case back to the file of Id. CIT(A) to adjudicate the issue afresh after considering the rejoinder/submissions given by the assessee and after giving an opportunity of being heard to the assessee.

9. Since, we are sending the case back to the file of the CIT(A) therefore, we do not adjudicate the grounds raised by the assessee on merits.

10. In the result, appeal filed by the Assessee, is allowed for statistical purposes.

Order pronounced in the open court on this 03/03/2017.

Sd/-

(S.S.VISWANETHRA RAVI)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-

(DR. A.L.SAINI)

लेखा सदस्य / ACCOUNTANT MEMBER

कोलकाता /Kolkata; दिनांक Dated 03/03/2017

प्रकाश मिश्रा/Prakash Mishra,नि.स/ PS

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

1. अपीलार्थी / The Appellant-M/s Govind Lal Diga
2. प्रत्यर्थी / The Respondent.- ITO Wd. 45(2), Kolkata
3. आयकर आयुक्त(अपील) / The CIT(A), Kolkata.
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार

(Asstt. Registrar)

आयकर अपीलीय अधिकरण, कोलकाता / ITAT, कोलकाता