

INCOME TAX APPELLATE TRIBUNAL, MUMBAI-"A", BENCH

सर्वश्री जोगिन्दर सिंह, न्यायिक सदस्य एवं राजेन्द्र, लेखा सदस्य

Before S/ShJoginder Singh, Judicial Member & Rajendra, Accountant Member

आयकर अपील सं./ITA/3770/Mum/2010, निर्धारण वर्ष /Assessment Years: 2002-03

Krishna Trading Co. 34, Kembros Indl. Estate Sonapur Lane, Off. LBS Marg, Bhandup(W), Mumbai-400 078. PAN:AACFK 0150 R	Vs.	The Income tax Officer Ward-23 (1), Pratyakhsakar Bhavan Bandra (East), Mumbai.
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(अपीलार्थी /Appellant)

(प्रत्यर्थी / Respondent)

Revenue by: Shri Arvind Kumar

Assessee by: Shri Mandar Vaidya

सुनवाई की तारीख / **Date of Hearing:** 04.04.2016

घोषणा की तारीख / **Date of Pronouncement:** 04.04.2016

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 A.M.-

Challenging the order dt.7.2.12 of CIT(A)-36, the assessee has filed the present appeal raising three grounds of appeal. Assessee-firm, engaged in the business of trading in wire rods of iron and steel, filed its return of income on 31.10.2007, declaring loss of Rs.6506/-. The AO completed the assessment on 14.12.2009 u/s. 143(3) of the Act, determining the income of the assessee the Rs.11.20 lakhs.

2. During the assessment proceedings, the AO found that assessee had shown some commission receipts. He directed the assessee to file explanation in that regard. The assessee stated that some of the partners had interest in Shreeji wires Industries (SWI), that it was a family concern, that M/s. Naveen Traders (NT), M/s. Pinky Wire Traders (PWT) and M/s. Vishal Traders (VT) wanted to purchase goods on credit from SWI, that a tripartite arrangement was made between the assessee those parties and SWI, that as per the agreement the assessee guaranteed payment and SWI guaranteed supply of material, that SWI was free to charge higher price and assessee was to receive commission from SWI. The AO summoned the three parties and recorded the statement of the partners. After considering the available material, he asked the assessee as to why the commission should not be treated as income from other sources. The assessee requested for cross examination of the parties. However, the AO rejected the request and the explanation and treated the commission income as income from other sources.

3. Aggrieved by the order of the AO the assessee preferred an appeal before the FAA. Before him, the assessee argued that in absence of cross examination the assessment was vitiated. Referring to the judgment of GTC Industries Ltd. (65ITD380), the FAA held that assessment was not vitiated if the cross examination was not allowed. Other grounds were also decided against the assessee.

4. Before us, the authorised Representative (AR) contended that there was violation of principles of natural justice, that specific request was made to afford a reasonable opportunity of cross examining the parties. Departmental Representative (DR) supported the order of the FAA.

5. We have heard the rival submissions and perused the material available with us we find that the assessee had requested the AO to allow him to cross examine the parties, that the first

GOA raised by the assessee was about cross examination only. We are of the opinion, that if the statement of a person is to be used against any assessee, it is the right of such assessee to demand cross-examination. In absence of opportunity of cross examination, the order cannot be called a reasoned and justifiable order. Principles of natural justice demand that everybody should be allowed to have fair chance of rebuttal. In the case under consideration, the AO had collected evidences behind the back of the assessee and before confronting it, used such material against it. Therefore, in our opinion, it would be in the interest of justice, if the matter is restored back to the file of AO for fresh adjudication. AO is directed to handover the copy of statements recorded to the assessee from the parties who had given statement against it and afford cross examination of those parties. First effective ground of the assessee is decided in favour of the assessee, in part.

As we have restored back the issue to the file of the AO we are not adjudicating the other issues.

As a result appeal filed by the assessee is allowed in part.

फलतः निर्धारिती द्वारा दाखिल की गई अपील अंशतः मंजूर की जाती है।

Order pronounced in the open court on 4th April, 2016.

आदेश की घोषणा खुले न्यायालय में दिनांक 04 अप्रैल, 2016 को की गई।

Sd/-

जोगिन्दर सिंह /Joginder Singh)

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated :04.04.2016.

Jv.Sr.PS.

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

1.Appellant /अपीलार्थी

2. Respondent /प्रत्यर्थी

3.The concerned CIT(A)/संबद्ध अपीलीय आयकर आयुक्त, 4.The concerned CIT /संबद्ध आयकर आयुक्त

5.DR "A " Bench, ITAT, Mumbai /विभागीय प्रतिनिधि, A खंडपीठ, आ.अ.न्याया.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.