



आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'के' मुंबई

IN THE INCOME TAX APPELLATE TRIBUNAL

"K" BENCH, MUMBAI

श्री राजेंद्र, लेखा सदस्य एवं श्री शक्तिजीत दे, न्यायिक सदस्य के समक्ष

BEFORE SHRI RAJENDRA, ACCOUNTANT MEMBER AND

SHRI SAKTIJIT DEY, JUDICIAL MEMBER

आयकर अपील सं. / **ITA no. 2962/Mum./2015**

(निर्धारण वर्ष / Assessment Year : 2005-06)

Tasty Bite Eatables Ltd.
204, Mayfair Towers
Wakdewadi, Shivaji Nagar
Pune 411 005
PAN - AAAC2317A

..... अपीलार्थी /
Appellant

v/s

Income Tax Officer
Ward-2(2)(3), Aayakar Bhawan
101, M.K. Road, Mumbai 400 020

..... प्रत्यर्थी /
Respondent

निर्धारिती की ओर से / Assessee by : Shri Ketan Ved

राजस्व की ओर से / Revenue by : Shri N.K. Chand

सुनवाई की तारीख /
Date of Hearing - 03.10.2016

आदेश घोषणा की तारीख /
Date of Order - 19.10.2016

आदेश / ORDER

शक्तिजीत दे, न्यायिक सदस्य के द्वारा /
PER SAKTIJIT DEY, J.M.

Aforesaid appeal by the assessee is directed against the order dated 19th February 2015, passed by the learned Commissioner (Appeals)-58, Mumbai, pertaining to assessment year 2005-06.

Grounds raised by the assessee are reproduced hereunder:-

"1:1 The Commissioner of Income-tax (Appeals) has erred in passing an ex-parte order in violation of the principles of natural justice.

1:2 The Appellant submits that considering the facts of its case and the law prevailing on the subject the ex-parte order passed by the Commissioner of Income-tax (Appeals) is bad in law and ab-initio void and hence ought to be struck down.

1:3 The Commissioner of Income-tax (Appeals) should be directed to re-hear the appeal denovo.

Without prejudice to the foregoing:

2:0 Re.: Adjustment of Rs.1,82,00,000/- on account of sales made to the Associated Enterprise ("AE").

2:1 The Commissioner of Income-tax (Appeals) has erred in upholding the action of the Assessing Officer, the Transfer Pricing Officer in making an upward adjustment of Rs. 1,82,00,000/- to the total income of the Appellant by holding that the international transactions relating to the sales made by the Appellate to its AE are not at arm's length.

2:2 The Appellant submits that considering the facts and circumstances of its case and the law prevailing on the subject the international transactions relating to the sales made by the Appellant to its AE were at an arm's length and hence no adjustment in respect thereof was called for and the stand taken by the Assessing Officer, the Transfer Pricing Officer in this respect is illegal, incorrect, erroneous and unjust and the Commissioner of Income-tax (Appeals) ought to have held as such.

2:3 The Appellant submits that the Assessing Officer be directed to delete the upward adjustment of Rs. 1.82,00,000/- made by him to the Appellant's total income and to re-compute its total income and tax liability accordingly.

2:4 Without prejudice to the aforesaid, the Appellant submits that adjustment, if any, should be restricted to the value of the 'international transactions' with the AE's and cannot be made to the value of the total export sales' made by the Appellant.

3:0 Disallowing 50 of the depreciation claimed on the additions made to plant and machiner^y and building during the year:

3:1 The Commissioner of Income-tax (Appeals) has erred in upholding the action of the Assessing Officer of disallowing 50% of the depreciation on the additions made to plant and machinery and

building during the year under consideration.

3:2 The Appellant submits that considering the facts and circumstances of its case and the law prevailing on the subject the disallowance made by the Assessing Officer of the depreciation on the additions made to plant and machinery and building is misconceived, erroneous, illegal and the Commissioner of Income-tax (Appeals) ought to have held as such.

3:3 The Appellant submits that the Assessing Officer be directed to delete the disallowance so made by him and to re-compute its total income accordingly.

4:0 Re.: General

4:1 The Appellant craves leave to add, alter, amend, substitute and/or modify in any manner whatsoever modify all or any of the foregoing grounds of appeal at or before the hearing of the appeal."

2. Ground no.4, being general in nature is not required to be adjudicated.
3. In ground no.1, with its sub-grounds, assessee has challenged the ex-parte order passed by the learned Commissioner (Appeals) to be in violation of principles of natural justice.
4. Brief facts are, the assessee a company filed its return of income on 31st October 2005, declaring total income at ₹ nil. Assessment in the case of assessee was completed vide order dated 29th December 2008, determining the income at ₹ nil after set-off of brought forward loss. However, though, the income was determined at ₹ nil, after set-off of brought forward loss, the Assessing Officer made certain additions viz., ₹ 1,82,00,000, on account of transfer pricing

adjustment and disallowance of part depreciation which had the effect of reducing the loss claimed by the assessee. Being aggrieved of the assessment order so passed, assessee preferred appeal before the first appellate authority.

5. The learned Commissioner (Appeals) disposed off assessee's appeal ex-parte by the impugned order by confirming the addition made by the Assessing Officer.

6. Learned Authorised Representative challenging the dismissal of appeal ex-parte submitted, in the course of hearing before the learned Commissioner (Appeals) on 26th December 2014, the assessee had informed the learned Commissioner (Appeals) that assessment jurisdiction of the assessee in the meanwhile has been transferred to Pune, hence, sought clarification whether the appeal will also be transferred to Pune. He submitted, in connection with the said issue, the learned Commissioner (Appeals) called for certain documents from the assessee and the appeal was adjourned from time to time. However, the last notice issued by the learned Commissioner (Appeals) on 28th January 2015 fixing the date of hearing to 9th February 2015 was never served upon the assessee. He, therefore, submitted, disposal of assessee's appeal ex-parte without affording a fair opportunity of being heard to the assessee is improper and in violation of natural justice. Hence, the order should be set aside and

the matter be restored back to the file of the learned Commissioner (Appeals) for allowing opportunity of hearing to the assessee.

7. The learned Departmental Representative on the other hand justifying the order of the learned Commissioner (Appeals) submitted, in spite of 12 opportunities being granted to the assessee, he did not represent the case, hence, the learned Commissioner (Appeals) was compelled to dispose off the appeal ex-parte.

8. We have considered the submissions of the parties and perused the material available on record. It is evident from the material placed before us that the assessee on account of change of its assessment jurisdiction to Pune, was having doubt whether the appeal would be heard by incumbent Commissioner (Appeals) or to be transferred to Pune, hence, sought clarification. The limited grievance of the assessee before us is, the learned Commissioner (Appeals) without affording due opportunity of being heard to the assessee had disposed off the appeal ex-parte confirming the additions made. Considering the nature of assessee's grievance, we are of the view, in the interest of fairplay and justice one more opportunity of hearing should be granted to the assessee for explaining its case before the learned Commissioner (Appeals). In view of the aforesaid, we set aside the impugned order of the learned Commissioner (Appeals) and restore the matter back to his file for denovo adjudication of the issues raised

by the assessee on merit after providing reasonable opportunity of being heard to the assessee. We also direct the assessee to co-operate with the learned Commissioner (Appeals) in finalizing the proceedings.

9. In view of our above decision, grounds raised by the assessee on merits have become infructuous, hence, not required to be adjudicated.

10. In the result, assessee's appeal is partly allowed for statistical purposes.

Order pronounced in the open Court on 19.10.2016

Sd/-

राजेंद्र,

लेखा सदस्य

RAJENDRA

ACCOUNTANT MEMBER

MUMBAI, DATED: 19.10.2016

Sd/-

शक्तिजीत दे,

न्यायिक सदस्य

SAKTIJIT DEY

JUDICIAL MEMBER

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

(Dy./Asstt. Registrar)
ITAT, Mumbai