

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.918/Kol/2016

(निर्धारण वर्ष / Assessment Year :2011-2012)

M/s R.S.Chemicals, Narayani Building, 27, Brabourne Road, Kolkata-700001	Vs.	ITO, Ward-36(1), Aayakar Bhawan Poorva, 110, Shantipally, Kolkata-700107
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAFFR 3325 Q		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

राजस्व की ओर से /Revenue by : Shri Manish Tiwari, FCA

निर्धारिती की ओर से /Assessee by : Md. Ghayas Uddin, JCIT

सुनवाई की तारीख / Date of Hearing : 15/02/2017

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 2011-2012, is directed against the order passed by the Id. Commissioner of Income Tax (Appeals)-10, Kolkata, in Appeal No.264/CIT(A)-10/Wd.36(1)/13-14, dated 07.02.2016, which in turn arises out of an order passed by the AO u/s.143(3) of the Income Tax Act 1961, (hereinafter referred to as the 'Act'), dated 25.02.2014.

2. Brief facts of the case qua the assessee are that the assessee firm filed its return of income for A.Y.2011-12 on 30-3-2012 declaring loss at Rs.17,450/-. The return of income was processed u/s.143(1) on 11-05-2012. Later on assessee's case was selected for scrutiny u/s.143(3) of the Act and the AO has completed the assessment by making addition on account of undisclosed commission income and interest paid by the assessee. The AO also disallowed bad debts claimed by the assessee.

3. Not being satisfied with the order passed by the AO, the assessee filed an appeal before the CIT(A), who has confirmed the additions made by the AO observing the followings :-

"02. On a perusal of the assessment order, it is seen that the AO has, after giving sufficient opportunity to the assessee, made certain additions, as are reflected in the grounds of appeal. For each addition, the elaborate facts have been recorded, and reasons for the disallowance mentioned. During appeal, nothing has been brought on record by the appellant to controvert the findings of the Assessing Officer. Not a single document has been submitted, or an iota of argument advanced by the appellant or the person appearing on behalf of him. This is true for the points raised by the appellant at Grounds 1 to 4. In the circumstances, I find no reason to interfere with the finding of the Assessing Officer in making the additions relating to these grounds.

03. Therefore, in the absence of anything said or evidenced contrary to the findings and additions of the AO, the action of the AO is confirmed, and the grounds taken by the appellant stand dismissed."

04. Grounds No.5 This ground is in relation to admission of additional ground etc. As the appellant has not prayed for any additional grounds or alternations in any grounds of appeals, the same is not required to be adjudicated-assessee.

In the final result, appeal filed by the appellant is treated as "dismissed."

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. That on the facts and in the circumstances of the case, Ld. CIT(A) is wrong in drawing adverse inference due to non-compliance on 20.01.2016 & 04.02.2016 and thereby dismissing assessee's appeal and confirming additions / disallowances made by A.O.*
- 2. That on the facts and in the circumstances of the case, non-compliances on 20.01.2016 & 04.02.2016 was, not intentional but due to compelling circumstances.*
- 3. That on the facts and in the circumstances of the case, Ld. CIT(A) is not justified in dismissing assessee's appeal without dealing on merit of addition & disallowances made by Assessing Officer and contested under Ground No. 1 to 4*

4. *That the appellant craves leave, to add, alter, adduce or amend any ground or grounds on or before the date of hearing of the appeal.*

5. Although in this appeal, the assessee has raised four grounds of appeal but the solitary grievance of the assessee is that the Id. CIT(A) has passed the order without giving an opportunity of being heard to the assessee.

6. Ld AR for the assessee has submitted before us that on the facts and in the circumstances of the case, non-compliances of notices on dated 20.01.2016 & 04.02.2016 was not intentional but due to compelling circumstances because partnership firm (assessee) was shutting down its business. The Ld. AR for the assessee has submitted before us that the assessee under consideration is a partnership firm. The partnership firm (assessee) has closed its business but partnership firm is yet to dissolve. The necessary formalities to dissolve the partnership form was going on when the proceedings was going on before the Id. CIT(A). Therefore, the office of the partnership firm were not opened for all the times. Since the partnership firm was in the closing process, therefore, it used to open its office off and on, therefore, letters sent by the CIT(A) might be returned back and this way, the assessee did not get the notice of hearing. Therefore, in the interest of justice, the Id. AR for the assessee, requested the Bench to send the case back to the file of Id. CIT(A) to re-adjudicate the same. The Ld. AR for the assessee also argued that since the rights and liabilities of the assessee has not been determined by the Id. CIT(A) because the notice of hearing were returned back (because of closure of the partnership firm) , as the partnership firm`s office used to open off and on only.

7. On the other hand, Id. DR for the revenue has primarily relied on the stand taken by the Id. CIT(A), but even he has agreed with the proposition canvassed by Id. AR for the assessee to send the matter back to the file of CIT(A) to re-adjudicate the issue afresh.

8. 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 the assessee is a partnership firm who has closed its business. The proceedings of dissolution of partnership firm was going on, therefore, the office of the partnership firm used to open only off and on and, hence, the notice of hearing sent by Id. CIT(A) could not received by the assessee. Since the rights and liabilities of the assessee firm has not been determined by Id. CIT(A), therefore, considering the principle of natural justice, we remit the case back to the file of Id. CIT(A) to re-adjudicate the issue afresh after giving proper opportunity of being heard to the assessee.

9. 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,Sr.PS.

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

1. अपीलार्थी / The Appellant-M/s R.S.Chemicals
2. प्रत्यर्थी / The Respondent.-ITO Ward-36(1), 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, Kolkata