

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.1289/Kol/2016

(निर्धारण वर्ष /Assessment Year:2006-2007)

Biswanath Lohia, HUF, 171/1, JN Mukherjee Road, Salkia, Howrah-6, C/o: Sri Jitendra Kaushik, Advocate, 19-D, Muktaram Babu Street, Kolkata-700007	Vs.	ITO, Ward-48 (3), 3, Govt. Place(W) Kolkata-700001
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No.: AAEHB 6352 A		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by : Shri Nirmal Kaushik, Advocate

Revenue by : Md. Ghyas Uddin, JCIT

सुनवाई की तारीख / Date of Hearing : 05/01/2016

घोषणा की तारीख/Date of Pronouncement 13/01/2017

आदेश / ORDER

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. Commissioner of Income Tax (Appeals)-14, Kolkata, in Appeal No.15/CIT(A)-14Wd-47(3)/2011-12, dated 28.04.2016, which in turn arises out of an order passed by the Assessing Officer (AO) Under Section 143(3)/154 of the Income Tax Act 1961, (in short the 'Act'), dated 28.03.2011.

2. Brief facts of the case qua the assessee are that the assessee filed its return of income on 8.11.2006 declaring total income of Rs.1,05,810/-. Assessee's case was selected for scrutiny u/s.143(3) and the AO has completed the assessment by making various additions. Later on, the Assessing Officer passed the rectification order Under Section 154 of the Act observing that deduction U/s 24(a) of the I.T. Act was wrongly allowed

to the assessee. Assessing officer observed that the assessee is not owner of any house property and an amount received by the Assessee Rs. 5,00,000/- is without any consideration.

3. Aggrieved from the order of the AO, assessee filed an appeal before the CIT(A), who relying on the decision of Hon'ble Supreme Court in the case of H.M.Esufali H.M. Abdulali (1973) 90 ITR 271, dismissed the appeal filed by the assessee. The observations of the Id CIT(A) are as under:-

In this connection, reliance may be placed upon the decision of Hon'ble Supreme Court in the case of H.M.Esufali H.M.Abdulali (1973) 90 ITR 271 wherein the Hon'ble Court has held that the appellate authority cannot substitute its own judgment in place of the judgment of the AO unless it is shown that the judgment of the AO was biased, irrational, vindictive or capricious.

In the result, the appeal of the appellant dismissed."

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

- 1 *For that on the facts and circumstances of the case the Ld. Commissioner of Income-tax (Appeals) erred in dismissing the ground of appeal raised before him that the Order passed by the Ld. Assessing Officer u/s 143(3)/154 of the I T Act is bad in law as in facts as there was no mistake which was apparent from record ignoring the submissions made before him officially on 25.10.2013.*
- 2 *For that on the facts and circumstances of the case the Ld. Commissioner of Income-tax (Appeals) erred in dismissing the ground of appeal raised before him that the Ld. Assessing Officer erred in not allowing a sum of Rs. 44,588/- being statutory deduction under section 24(a) of the I T Act 1961 under the head" Income from House property in rectification order ignoring the submission made before him officially on 25.10.2013*
- 3 *For that on the facts and circumstances of the case the Ld. Commissioner of Income-tax (Appeals) erred in dismissing the ground of appeal raised before him that the Ld. Assessing Officer erred in adding a sum of Rs. 5,00,000/- on the alleged ground of amount received without any consideration in*

rectification order ignoring the submission made before him officially on 25.10.2013

4 *For that your appellant craves leave to adduce further or other ground/grounds, if any on or before the hearing of appeal.*

5. Ld. AR for the assessee has submitted before us that the assessee submitted written submission before the Id. CIT(A) but while passing the order, the Id. CIT(A) did not consider the material submitted by the assessee, which is against the principle of natural justice. Therefore, Id. AR requested before us to remand the case back to the file of Id. CIT(A) to re-adjudicate the same after giving proper opportunity of being heard to the assessee. No doubt, the assessee could not attend the office of the Id CIT (A) on many occasions/date of hearings, but he submitted the written submission on dated 25-10-2013 before the Id CIT(A), and the said written submissions were not considered by the Ld. CIT(A) while disposing off the appeal. Therefore, order passed by the Id CIT(A) is against the principle of natural justice.

6. On the other hand, Id. DR for the revenue has relied on the orders of the authorities below.

7. Having heard the rival submissions, perused the material on record, we are of the view that there is merit in the submissions of Id. AR for the assessee. As the proposition canvassed by Id. AR for the assessee are supported by the facts narrated by him above. Ld. AR has submitted before us that assessee has submitted written submission before the Id. CIT(A) on dated 25-10-2013, but he did not consider the written

submission while passing the order, which is against the principle of natural justice. Therefore, considering the factual position, we are of the view to remit the case back to the file of Id. CIT(A) with a direction to re-adjudicate the issue after giving the proper opportunity of being heard to the assessee and after taking into account the written submissions already submitted by the assessee.

8. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on this 13/01/2017.

Sd/-
(S.S.VISWANETHRA RAVI)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(DR. A.L.SAINI)
लेखा सदस्य / ACCOUNTANT MEMBER

कोलकाता /Kolkata; दिनांक Dated 13/01/2017

प्रकाश मिश्रा/Prakash Mishra,नि.स/ PS

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

1. अपीलार्थी / The Appellant-Biswanath Lohia HUF
2. प्रत्यर्थी / The Respondent.-ITO Ward-48(3), 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