

आयकर अपीलीय अधिकरण “जे” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL “J” BENCH, MUMBAI

श्री डी. मन्नमोहन, उपाध्यक्ष एवं श्री संजय अरोड़ा, लेखा सदस्य के समक्ष ।
BEFORE SHRI D. MANMOHAN, VP AND SHRI SANJAY ARORA, AM

आयकर अपील सं./I.T.A. No. 1895/Mum/2011
(निर्धारण वर्ष / Assessment Year: 2006-07)

Gausia Cold Storage Pvt. Ltd. 133, Kazi Sayed Street, 5 th Floor, Guru Krupa Bldg., Masjid Bunder, Mumbai-400 003	बनाम/ Vs.	Asst. CIT-6(3) 522, Aaykar Bhavan, M. K. Road, Mumbai-400 020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AAACG 2115G		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)
अपीलार्थी की ओर से / Appellant by	:	None
प्रत्यर्थी की ओर से/Respondent by	:	Shri Vivek Perampurna
सुनवाई की तारीख / Date of Hearing	:	22.10.2014
घोषणा की तारीख / Date of Pronouncement	:	16.01.2015

आदेश / ORDER

Per Sanjay Arora, A. M.:

This is an Appeal by the Assessee directed against the Order u/s. 264 of the Income Tax Act, 1961 ('the Act' hereinafter) dated 08.02.2011 for the assessment year (A.Y.) 2006-07, dismissing its application under the said section.

2. None appeared for and on behalf of the assessee when its appeal was called out for hearing, nor any adjournment application stands received. Even on earlier occasions there had been no representation for and on behalf of the assessee despite due service of notice

of hearing. Under the circumstances, it was only considered fit and proper to proceed with the matter, and decide the appeal after hearing the party before us.

3. The assessee company sought revision of its assessment, finalized u/s.143(3) on 03.12.2008, accepting the returned income of Rs.35,19,179/-, u/s.264 of the Act on the ground that the deduction u/s.80-IB, to which it was entitled, had not been allowed per the impugned assessment. The deduction, for which it was otherwise eligible since the first year of operating a cold storage, i.e., A.Y. 1998-99, could not be claimed up to the immediately preceding year on account of continued losses. The assessee returning profit for the first time for the current year, forgot to prefer the claim u/s.80-IB, and hence its petition u/s.264. The Id. CIT, as a competent authority, rejected the same on the ground that the said claim had not been made either per the return of income for the year or even during the assessment proceedings, so that the application for revision u/s.264, as made, is misconceived and not maintainable. Reliance was also placed by him on the decision in the case of *Goetze (India) Ltd. vs. CIT* [2006] 284 ITR 323 (SC). Aggrieved, the assessee is in appeal.

4. We have heard the party before us, and perused the material on record. Without doubt, the impugned order is not a speaking order, i.e., not dilating on the scope of the revision u/s.264, on the maintainability or otherwise in law of the petition under which the fate of the assessee's appeal would lie. The assessee, on the other hand, has cited several decisions by the higher courts of law, including by the apex court, *qua* the scope of provision u/s.264, viz. *Dwarka Nath vs. ITO* [1965] 57 ITR 349 (SC); *Ramdev Exports vs. CIT* [2001] 251 ITR 873 (Guj); *Parekh Brothers vs. CIT* [1984] 150 ITR 105 (Ker); and *M. Chettyappan & Ors. v. CIT* [1977] 110 ITR 684 (Mad).

Under the circumstances, we only consider it fit and proper to restore the matter back to the file of the Id. CIT to adjudicate the assessee-appellant's application afresh in accordance with the law per a speaking order and after allowing a reasonable opportunity of hearing to it. We decide accordingly.

5. In the result, the assessee's appeal is allowed for statistical purposes.
परिणामतः निर्धारिती की अपील सांख्यकीय उद्देश्य के लिए स्वीकृत की जाती है ।

Order pronounced in the open court on January 16, 2015

Sd/-
(D. Manmohan)

उपाध्यक्ष /Vice President

Sd/-
(Sanjay Arora)

लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated : 16.01.2015

व.नि.स./Roshani, Sr. PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT - concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai