IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "SMC", MUMBAI

BEFORE SHRI D.T. GARASIA, JUDICIAL MEMBER

ITA No.2598/M/2017
Assessment Year: 2010-11

Income Tax Officer-2(1)(1), 543, Aayakar Bhavan, 5th Floor, M.K. Marg, Mumbai – 400 020	Vs.	M/s. Balkan Chemicals Pvt. Ltd., A-183, MIDC, Phase-1, Dombivli – 421301 **PAN: AAACB1980D**
(Appellant)		(Respondent)

Present for:
Assessee by : Shri Subodh Ratnaparkhi, A.R.
Revenue by : Shri B.S. Bist, D.R.

Date of Hearing : 13.06.2017
Date of Pronouncement : 29.06.2017

O R D E R

Per D.T. Garasia, Judicial Member:

The present appeal has been preferred by the Revenue against the order dated 11.01.2017 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2010-11.

2. The short facts of the case are as under:

The assessee has filed the return for A.Y. 2010-11. Thereafter, the notice under section 148 was issued to the assessee and assessee was directed to file the return. As per the AIR information assessee company has sold the immovable properties at Rs.27,00,000/- each on 18.02.2010 vide registration No.1924 & 1925 of 2010 of flat No.701 & 702, 7th floor, Harmony, Mumbai. And according to the said information assessee was asked to give the copy of sale deed of the above properties. But assessee did not submit any copy. The

AO called for the information from Dombivali Nagari Sahakari Bank Ltd. regarding assessee's banking transaction and made the addition.

3. Matter carried to the Ld. CIT(A) and the Ld. CIT(A) has allowed the claim of the assessee. During the course of hearing, the Ld. D.R. submitted that assessee did not remain present before the Assessing Officer (hereinafter referred to as the AO). All the evidences were submitted before the Ld. CIT(A) and the Ld. CIT(A) has granted the relief but Ld. CIT(A) has not called for the remand report from the AO. Moreover, Ld. CIT(A) himself has not made enquiry. Therefore, it is a violation of Rule 46A of the Income Tax Rules by not giving the AO an opportunity to examine the evidence filed during the appellate proceeding more so when the assessee has not attended during the assessment proceeding and the order was passed under section 144 of the Act.

4. The Ld. A.R. fairly admitted that the order is passed ex-parte without giving opportunity.

5. We have heard the rival contentions of both the parties. Since the Ld. A.R. has admitted that the order is passed ex-parte without giving opportunity to the AO, without going into the merit of the case we restore this matter to the file of the AO for decision afresh as per law.

6. In the result, appeal of the Revenue is treated as allowed.

Order pronounced in the open court on 29.06.2017.

Sd/-
(D.T. Garasia)
JUDICIAL MEMBER

Mumbai, Dated: 29.06.2017.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.