

IN THE INCOME TAX APPELLATE TRIBUNAL

“A” BENCH : BANGALORE

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER AND
SMT. BEENA PILLAI, JUDICIAL MEMBER

ITA No. 3323/Bang/2018
Assessment Year : 2010-11

M/s. Sree Rajendra Textiles, No. 385, 4 th Floor, RMV 2 nd Stage, 2 nd Block, 80 Feet Road, Sanjaynagar, Bangalore – 560 094. PAN: AAEFS9813K	Vs.	The Deputy Commissioner of Income Tax, Circle – 5 [2] [1], Bangalore.
APPELLANT		RESPONDENT
Assessee by	:	Shri V. Srinivasan, Advocate
Revenue by	:	Smt. H.L. Soumya Achar, Addl. CIT (DR)
Date of hearing	:	24.06.2019
Date of Pronouncement	:	28.06.2019

ORDER

Per Shri A.K. Garodia, Accountant Member

This appeal is filed by the assessee and the same is directed against the order of Id. CIT(A)-5, Bangalore dated 28.09.2018 for Assessment Year 2010-11.

2. The grounds raised by the assessee are as under.

“1. The orders of the authorities below in so far as they are against the appellant are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.

2. The learned CIT[A] is not justified in disposing off the appeal filed without allowing sufficient opportunity to the appellant in course of the appellate proceedings under the facts and in the circumstances of the appellant's case.

3. Without prejudice to the above, the order of re-assessment is bad in law and void-ab-initio for want of requisite jurisdiction especially, the mandatory requirements to assume jurisdiction u/s 148 of the Act did not exist and have not been complied with and consequently, the re-assessment requires to be cancelled.

3.1 The learned CIT[A] ought to have appreciated that the A.O. had failed to pass a speaking order following the decision of the Hon'ble Supreme Court in the case of M/s. GKN DRIVESHAFTS INDIA LTD reported in 259 ITR 19 [SC] before finalizing the re-opened assessment on the objections raised by the appellant and hence, the impugned order passed is bad in law and the same ought to have been cancelled.

4. The learned CIT[A] is not justified in upholding the addition of Rs.1,11,91,377/- made by the learned A.O. as accommodation entries secured by the appellant under the facts and circumstances of the appellant's case.

4.1 The learned CIT[A] failed to appreciate that the appellant had purchased DFIA license from M/s. Riddi Siddi Silks and had paid an advance of Rs. 35,00,000/- to M/s. Sai Fashion for purchase of DFIA License and that these transactions carried out by the appellant were genuine and in normal course of business and that the so-called investigation at Ahmedabad was never put to the appellant in course of assessment proceedings under the facts and circumstances of the appellant's case.

4.2 The learned CIT[A] failed to appreciate that the A.O. erred in law and facts in making the aforesaid addition by relying on certain data, findings of the general investigation and also third party statements without establishing the basis of treatment of the payment as a bogus expenses and without establishing nexus with the appellant's case with such information nor allowing any opportunity to cross-examine those parties under the facts and circumstances of the appellant's case.

4.3 The learned CIT[A] failed to appreciate that even in the information / statements relied upon by the learned A.O. as per the assessment order there was no mention of the name of the appellant as a beneficiary of the so called accommodation entries alleged to be provided by certain operators and therefore, the addition sustained was misconceived under, the facts and circumstances of the appellant's case.

4.4 The addition made by the A.O. and sustained by the learned CIT[A] is purely on suspicion and surmise, assumptions and presumptions and without any evidence / materials on records and consequently, the addition made requires to be deleted.

5. Without prejudice to the right to seek waiver with the Hon'ble CCIT/DG, the appellant denies itself liable to be charged to interest u/s. 234-B and 234-C of the Act, which under the facts and in the circumstances of the appellant's case and the levy deserves to be cancelled.

6. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs.”

3. It was submitted by Id. AR of assessee that ground no. 1 is general and regarding ground no. 2, he submitted an affidavit of the Managing Partner of the assessee firm and pointed out that in the impugned order of CIT(A), it is stated that the appeal was fixed for hearing on 24.09.2018 and Shri S.V. Surana, CA, AR of assessee appeared before CIT(A) but in the affidavit filed by the Managing Partner of the assessee firm, it is stated that no notice of hearing was received from CIT(A) and no instruction was given to the AR of

assessee Shri S.V. Surana, CA regarding appearing before CIT(A) and it is also informed by such Id. AR of assessee Shri S.V. Surana, CA that he neither appeared before CIT(A) as mentioned in the order of CIT(A) nor he has received any notice of hearing fixing the case for hearing on 24.09.2018 as mentioned in the appellate order dated 28.09.2018. He submitted that under these facts and in the interest of justice, the matter may be restored back to the file of CIT(A) for fresh decision after providing adequate opportunity of being heard to assessee. The Id. DR of revenue supported the order of CIT(A).

4. We have considered the rival submissions. We find that although it is noted by CIT(A) on page no. 1 of his order that last date of hearing was 24.09.2018 and for assessee, Shri S.V. Surana, CA was present. But this issue was decided by him as per para 5 of his order and in this para, there is no mention about any submission made by said Id. AR of assessee. For ready reference, we reproduce para 5 of the order of CIT(A) which is as under.

“5. I have considered the above grounds of appeal, statement of facts and written submissions filed by the appellant and also perused the assessment order. The case was reopened on receipt of information from DIT (Inv) Ahmedabad, that the bank account of M/s. Riddhi Siddhi Silks and M/s. Sai Fashions were credited with Rs.76,91,377/- and Rs. 35,00,000/- respectively by the assessee firm during FY 2009-10. The reason for reopening was communicated to the assessee vide letter dated 12.06.2017 and the opportunity to raise objection, if any also given. The assessee replied vide letter dated 19.06.2017 enclosing the ledger extracts of M/s. Riddhi Siddhi Silks and M/s. Sai fashions in the book of the assessee firm.

The assessee firm purchased DEPB License with L.no.0810080674 dated 12.06.09 for Rs.59,47,760/- and L.no.0810081027 dated 26.06.09 for Rs. 47,43,617/- and remaining amount was treated as an advance and not claimed as an expense. It was also started that the firm paid Rs.35,00,000/- to M/s Sai Fashions towards purchase of DEPB license. However since it did not materialize, it was treated as advance and the same was refunded to the assessee firm and the same was not considered as an expense. The AR could not establish the said transaction as genuine by way of submitting any proof like corresponding between the transaction parties. Copy of the DEPB license available with the said entities and any kind of proof that the same was offered to the assessor: firm for consideration The enquiry conducted by investigation team Ahmadabad reveals that M/s. Riddhi Siddhi Silks and M/s. Sai Fashions along with few other entities created for the sole motive of providing accommodation entries and are bogus

in nature. The report also states that these entities were indulging in round tripping inter transfer of funds. Modus operandi revealed during investigation and Fund flow/ transfer analysis was narrated in the assessment order. The investigation report of Ahmedabad investigation wing reveals that those two parties were neither exist nor not traceable. Under the circumstances, the credit entries in the bank account of the respective parties were considered as unexplained credit entries u/s.68 of the Act.

Therefore. it was inferred that the two concerns/firms created with a sole intention of providing accommodation entries to various person/beneficiaries. They have not carried out any business activates with the persons from whom credit entries are appearing in their bank account. Even credit entries appearing in their bank account are merely accommodation entries to help the beneficiaries to book bogus expenses. Therefore, the Assessing Officer has treated the amount credited in the bank accounts of M/s. Riddhi Siddhi Silks and M/s. Sai Fashions with Rs.76,91,377/- and Rs. 35,00,000/- respectively by the assessee firm as unexplained credit entries u/s.68 of the Act. I do not find any infirmity in the impugned order passed by the Assessing Officer which needs any interference. Therefore, the grounds of appeal are hereby dismissed.”

5. From the above para, it is seen that Id. CIT(A) is talking about grounds of appeal, statement of facts and written submissions filed by the assessee and the assessment order. But there is no mention about any argument of Id. AR of assessee or any written submissions filed by him. In view of these facts and in view of the affidavit filed by the Managing Partner of the assessee firm, we feel it proper to set aside the order of CIT(A) and restore the matter back to his file for fresh decision after providing reasonable opportunity of being to both sides. We order accordingly. In view of this decision, no adjudication is called for at the present stage on the merit of the issue involved in this appeal.
6. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-
(BEENA PILLAI)
Judicial Member

Sd/-
(ARUN KUMAR GARODIA)
Accountant Member

Bangalore,
Dated, the 28th June, 2019.
/MS/

Copy to:

1. Appellant
2. Respondent
3. CIT

4. CIT(A)
5. DR, ITAT, Bangalore
6. Guard file

By order

Assistant Registrar,
Income Tax Appellate Tribunal,
Bangalore.