

**IN THE INCOME TAX APPELLATE TRIBUNAL (VIRTUAL COURT
DB-II), 'C' BENCH MUMBAI**

BEFORE SHRI M.BALAGANESH, AM

&

SHRI RAVISH SOOD, JM

**ITA No.2298/Mum/2017
(Assessment Year :2011-12)**

Asst. CIT-9(2)(2) Mumbai	Vs.	M/s. Classic Stripes Pvt. Ltd., 164, Senapati Bapat Marg Matunga (W) Mumbai – 400 016
PAN/GIR No.AAACC5076F		
(Appellant)	..	(Respondent)

Revenue by	Shri Amit Pratap Singh, Sr. AR
Assessee by	Shri Hariom Tulsian, Advocate
Date of Hearing	10/07/2020
Date of Pronouncement	10/08/2020

आदेश / ORDER

PER M. BALAGANESH (A.M):

This appeal in ITA No.2298/Mum/2017 for A.Y.2011-12 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-12, Mumbai in appeal No. CIT(A)-12/ACIT-6(2)(1)/299/15-16 dated 07/05/2015 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3)of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 31/03/2015 by the Id. Asst. Commissioner of Income Tax, 6(2)(1),Mumbai (hereinafter referred to as Id. AO).

2. Revenue has raised the following ground of appeal:-

(i). “Whether on the facts and circumstances of the case and in law the Id. CIT(A) erred in holding that the assessment has been completed beyond the time limit prescribed u/s.153(1)(a) of the Act, without appreciating the fact that the case of the assessee was referred to FT & TR Division, CBDT, New Delhi for seeking information and accordingly the assessment was completed within time as per the provisions of section 153(4) Explanation 1(viii)?”

3. We have heard rival submissions and perused the materials available on record. We find that assessment for the A.Y. 2011-12 was completed by the Id. AO on 31/03/2015 u/s.143(3) of the Act. The due date for completion of assessment ended on 31/03/2014. Accordingly, the assessee pleaded by way of a specific ground before the Id. CIT(A) that the assessment framed by the Id. AO was barred by limitation. We find that the Id. CIT(A) had issued notice in ITNS 51 to the Id. AO on 12/10/2015 for furnishing particulars and report on the points raised therein, including the desire of the Id. AO to be present at the time of hearing the appeal. We find that assessee has also raised several grounds on merits before the Id. CIT(A) in respect of various disallowances / additions made in the assessment. The Id. AO did not put forth objections either in writing or by physical presence at or before the time of hearing before the Id. CIT(A). In this background, we find that there was no occasion for the Id. CIT(A) to even doubt about the claim made by the assessee that the assessment was barred by limitation. Accordingly, the Id. CIT(A) vide order dated 02/01/2017 held that assessment completed

on 31/03/2015 is beyond the time limit prescribed in Section 153(1)(a) of the Act and accordingly, the entire assessment was quashed. No adjudication was made by the Id. CIT(A) on merits, in view of the fact that the entire assessment has been quashed void ab initio. Before us, the revenue has raised only one ground stating that the case of the assessee was referred to FT & TR division of CBDT for seeking information and accordingly, the Id. AO was entitled to one year time limit for completion of assessment in terms of Section 153(4), Explanation – 1, Clause-viii of the Act. We find that the Id. DR vehemently argued that the Id. CIT(A) grossly erred in quashing the assessment without referring to the assessment records which would have disclosed the fact of having made reference to FT & TR division of CBDT which consequently would extend the time limit for completion of assessment by one year.

3.1. Per contra, the Id. AR vehemently opposed to the basic ground raised by the revenue before this Tribunal by stating that the ground raised does not emanate from the order of the lower authorities as there was absolutely no mention about making any reference to FT & TR division of CBDT with regard to the assessee either in the assessment order or in the order of the Id. CIT(A). Accordingly, the Id. AR pleaded that the appeal of the revenue should be treated as not maintainable.

3.2. In this regard, we directed the Id. DR to produce the assessment records and accordingly the case was treated as part heard and the

revenue could not produce the assessment records till the date of final hearing on 10.07.2020 despite several opportunities given to them. Accordingly, we proceed to dispose off this appeal in the following manner:-

We find whether the case of the assessee was referred to FT & TR division of CBDT, New Delhi for seeking certain information is a fact which requires to be verified. Since, the Id. AO had not given any observation in his assessment order with regard to the basic fact of even making a reference to FT & TR division of CBDT vis-à-vis the case of the assessee, we deem it fit and appropriate in the interest of justice and fair play to remand the entire appeal to the file of the Id. AO for denovo adjudication in accordance with law qua the issues on which additions / disallowances were made by the Id. AO. The Id. AO is directed to mention specifically in his assessment order with regard to the fact of referring the case of the assessee to FT & TR division of CBDT and the outcome of such reference. We direct that the Id. AO should adjudicate the entire issue on merits afresh qua the additions / disallowances already made in the assessment and also in the light of our decision rendered in the case of the assessee in earlier year. Accordingly, the ground raised by the revenue is allowed for statistical purposes.

4. In the result, appeal of the revenue is allowed for statistical purposes.

Order pronounced on 10/08/2020 by way of proper mentioning in the notice board.

Sd/-
(RAVISH SOOD)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 10/08/2020
KARUNA, *sr.ps*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai