

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G", MUMBAI**

**BEFORE SHRI SAKTIJIT DEY (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 347/MUM/2019
Assessment Year: 2010-11**

M/s Gopesh Impex Pvt. Ltd.,
303, Kanchan Ganga Apts,
Dattani Park, Kandivali (East),
Mumbai-400099.

ITO-12(2)(3),
Vs. Mumbai-400020.

**PAN No. AAACG9004B
Appellant**

Respondent

Assessee by : None
Revenue by : Mr. V. Vinod Kumar, DR

Date of Hearing : 05/10/2020
Date of Pronouncement: 07/10/2020

ORDER

PER N.K. PRADHAN, A.M.

This is an appeal filed by the assessee. The relevant assessment year is 2010-11. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-20, Mumbai [in short 'CIT(A)'] and arises out of the assessment completed u/s 143(3) r.w.s. 147 the Income Tax Act 1961, (the 'Act'). Though the case was fixed for hearing on 17.02.2020 and 05.10.2020, neither the assessee nor its authorized representative participated in the hearing before the Tribunal. As there is non-compliance by the assessee, we are proceeding to dispose off this appeal after examining the materials available on record and hearing the Ld. Departmental Representative (DR).

2. The grounds of appeal filed by the assessee read as under :

1.1 On the facts and circumstances of the case and in law, the CIT(A) erred in passing order without providing of reasonable opportunity of hearing and not following the principle of natural justice, hence, the order passed is invalid and void ab-initio.

1.2 On the facts and circumstances of the case and in law, the CIT(A) erred in passing order dated 31.12.2018 without providing of reasonable opportunity of hearing and not considering the adjournment request made before CIT(A) by email dated 28.12.2018 in response to CIT(A)'s email dated 28 Dec 2018 for short adjournment.

2.1 On the facts and circumstances of the case and in law, the Appellant object the reopening of the assessment under section 147 of Income Tax Act, 1961 ('the Act')

2.2. The notice issued u/s 148 the Act is invalid and void ab initio as the reason recorded amounts to reason to suspect and do not amount to reason to believe and the said reason do not constitute belief.

2.3. On the facts and circumstances of the case and in law the re-opening of the assessment is invalid and void ab initio, as Appellant had truly and fully disclosed all facts for Share Application Money, during the Original Assessment and no fresh material was found against the Appellant, to arrive at a conclusion that income had escaped assessment and the re-opening was based on a third party information.

3.1 On the facts and circumstances of the case and in law, the CIT(A) erred in not deleting the addition of Rs.3,00,00,000/- in respect of share application money received, which was treating the same as Cash Credit under section 68 of the Act without considering the facts that the Appellant and the investors had provided all the details and explanation for proving the identity, genuineness and credit worthiness of the Share Applicants.

3.2 On the facts and circumstances of the case and in law, the CIT(A) erred in not deleting the addition of Share Application money which was made mere on the

assumption and surmise, based on the information received from the investigation department without considering the facts that there was no evidence or material or direct statement against the Appellant

3.3 On the facts and circumstances of the case and in law, the CIT(A) erred in not deleting the addition on the basis of the information received from the investigating department without considering the facts of the Appellant case without providing the alleged tangible material to the Appellant.

3.4 On the facts and circumstances of the case and in law, the CIT(A) erred in not deleting the addition of Share Application money based on the information received from the investigation department, without affording the said alleged statement/s recorded against the Appellant, so that there was no opportunity for Appellant to cross examine, is against the principle of natural justice.

3.5. On the facts and circumstances of the case and in law, the CIT(A) erred in not deleting the addition of Share Application money without considering the facts that entire amount was repaid, in absence of allotment of shares.

3. Briefly stated, the facts of the case are that the assessee filed its return of income for the assessment year (AY) 2010-11 on 15.10.2010 declaring loss at Rs.36,048/-. On the basis of information from the Director General of Income Tax (Inv.) Kolkata that the assessee had received share application money from three shell companies i.e. Aadita Constructions Pvt. Ltd. (Rs.1,00,00,000/-), Akshaj Multitrade Pvt. Ltd. (Rs.1,00,00,000/-) and Adhik Multitrade Pvt. Ltd. (Rs.1,00,00,000/-), the Assessing Officer (AO) made inquiries/verifications. As a result of such inquiries/verifications, the AO arrived at a finding that the assessee received Rs.3,00,00,000/- in the guise of share application money from the above three shell companies and therefore, brought it to tax as unexplained tax credit u/s 68 of the Act.

4. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). We find that the Ld. CIT(A) *vide* order dated 31.12.2018 confirmed the addition of Rs.3,00,00,000/- made by the AO as unexplained cash credit u/s 68 of the Act by deciding the appeal *ex-parte* on the following reasons :

“In the course of the appellate proceedings, hearings were fixed on 26.11.2018, 18.12.2018 and again on 28.12.2018. Also, a letter dated 12.11.2018 was issued requesting the appellant to furnish certain documents. In respect of hearing on 26.11.2018, the appellant sought adjournment. For hearings on next two days, the appellant did not respond to the hearing notices in any manner. Nor did the appellant furnish the documents called for. I, therefore, presume that the appellant is not serious in prosecuting the appeal. Therefore, the appeal is disposed off based on material available on record.”

5. Before us, the Ld. DR submits that as there was repeated non-compliance by the assessee, the Ld. CIT(A) has rightly affirmed the order of the AO.

6. We have heard the Ld. DR and perused the relevant materials on record. In the instant case, as mentioned earlier the assessee filed a reply in respect of the hearing fixed on 26.11.2018, asking for an adjournment. As per the Ld. CIT(A) the assessee did not respond to the notices fixed for hearing on 18.12.2018 and 28.12.2018. As mentioned in the grounds of appeal, it is the contention of the assessee that the Ld. CIT(A) did not consider the request made by e-mail dated 28.12.2018 by the assessee seeking a short adjournment.

In view of the such factual scenario, we are of the considered view that the assessee may be given an opportunity to present its case before the Ld. CIT(A). Accordingly, we set aside the order of the Ld. CIT(A) and restore the matter to him to decide the issue afresh after giving reasonable opportunity of

being heard to the assessee. We also direct the assessee to appear before the Ld. CIT(A) on the date fixed for hearing.

7. In the result, the appeal is allowed for statistical purposes.

Order pronounced through notice board under rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963.

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER

Mumbai;
Dated: 07/10/2020
Rahul Sharma Sr. PS

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,
(Dy./Asstt. Registrar)
ITAT, Mumbai