

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F" MUMBAI**

**BEFORE SHRI RAJESH KUMAR (ACCOUNTANT MEMBER) AND
SHRI RAVISH SOOD (JUDICIAL MEMBER)**

**ITA No.5918/MUM/2019
(Assessment Year: 2016-17)**

M/s Jet Build Housing &
Infrastructure Pvt. Ltd.
16, Om Shanti, Jayraj Nagar,
Borivali West,
Mumbai – 400092

ITO -12(3)(1)
Vs. Room No. 147A, 1st Floor,
Aayakar Bhavan, M.K. Road,
Mumbai – 400020

PAN No. AACCCJ5049D

(Assessee)

(Revenue)

Assessee by : Shri Japen Shah, A.R
Revenue by : Ms. Usha Gaikwad, D.R

Date of Hearing : 08/06/2021
Date of pronouncement : 09/06/2021

ORDER

PER RAVISH SOOD, J.M:

The present appeal filed by the assessee is directed against the order passed by the CIT(A)-20, Mumbai, dated 26.07.2019, which in turn arises from the order passed by the A.O under Sec. 144 of the Income Tax Act, 1961 (for short 'Act') dated 18.12.2018. The assessee has assailed the impugned order on the following grounds before us:

- "1. The Id. CIT appeal erred in passing ex-parte order.
2. the Id. CIT Appeal erred in confirming addition of Rs.1,09.66,369/- u/s 68 of the Income tax Act, 1961.

3. the Id. CIT appeal erred in not appreciating the fact that out of the total amount of Rs.1,,09,66,369/- Rs. 31,55,288/- was secured loan.
4. The appellant craves your honours leave to add to, amend or to withdraw any of the above grounds of appeal on or before final hearing.”

2. Briefly stated, the assessee company had filed its return of income for A.Y 2016-17 on 17.10.2016, declaring a total income of Rs.13,97,650/-. The return of income filed by the assessee was processed as such under Sec. 143(1) of the Act. Subsequently, the case of the assessee was selected for scrutiny assessment under Sec. 143(2) of the Act.

3. As the assessee in the course of the assessment proceedings neither complied with the notices issued under Sec. 143(2) and Sec. 142(1) of the Act nor furnished the documents that were called for by the A.O, therefore, the latter framed the assessment vide his order passed under Sec. 144, dated 18.12.2018 at an income of Rs.1,23,64,020/-.

4. Aggrieved, the assessee carried the matter in appeal before the CIT(A). As the assessee in the course of the appellate proceedings despite sufficient opportunity failed to put up an appearance before the CIT(A), therefore, the latter proceeded with and decided the appeal on the basis of the material available on record. Observing that the assessee had failed to discharge the onus that was cast upon it as regards proving the identity of the loan creditors; genuineness of the transactions; and also the capacity of the creditors to advance the loans, the CIT(A), thus, upheld the addition of Rs.1,09,66,369/- made by the A.O under Sec.68 of the Act. The CIT(A) while concluding as hereinabove, observed, that as the assessee had failed to rebut the findings of the A.O, therefore, there was no justifiable reason to interfere with the order passed by him. On the other hand, it was submitted by the assessee that as its accountant who was looking after the matter had remained absent from office for a long time, therefore, the matter may be set aside to the file of the A.O. However, the CIT(A) did not find favour with the aforesaid submission of the assessee. Observing, that there was no provision for setting aside of an

assessment order by the CIT(A), the aforesaid request of the assessee was accordingly rejected. On the basis of his aforesaid observations the CIT(A) dismissed the appeal.

5. Before us, the Id. Authorized Representative (for short 'A.R') elaborating on the reason due to which the assessee had failed to submit the requisite details as were called for in the course of the assessment proceedings, submitted, that the said lapse had occasioned because the accountant of the assessee company who was in possession of the relevant details had at the said relevant point of time remained absent from office for a long time. It was further submitted by the Id. A.R that as the addition u/s 68 of Rs. 1,09,66,369/- made by the A.O under Sec. 68 had been summarily endorsed by the CIT(A) by way of an ex-parte order, therefore, the matter in all fairness be restored to the file of the CIT(A) with a direction to dispose off the appeal after affording an opportunity of being heard to the assessee.

6. Per contra, the Id. Departmental Representative (for short 'D.R') did not object to the request of the assessee's counsel for restoring of the matter to the file of the CIT(A).

7. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record. As is discernible from the record, the assessee had in the course of the proceedings before the lower authorities adopted a lackadaisical approach and had neither put up an appearance nor furnished the requisite details as were called for by them. However, finding some force in the reason due to which the assessee had failed to furnish the requisite details before the lower authorities, coupled with the fact that the CIT(A) had summarily endorsed the observations of the A.O and had upheld the addition, we are of the considered view that in all fairness the matter be restored to the file of the CIT(A), with a direction, to dispose off the appeal afresh after affording an opportunity of being heard to the assessee.

8. The appeal filed by the assessee is allowed for statistical purposes in terms of our aforesaid observations.

Order pronounced in the open court 09.06.2021

Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER

Sd/-
(Ravish Sood)
JUDICIAL MEMBER

Mumbai;

Dated: 09.06.2021

PS: Rohit

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.

BY ORDER,
//True Copy//
(Sr. Private Secretary)
ITAT, Mumbai