



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

BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER

ITA no.6600/Mum./2019
(Assessment Year : 2015-16)

Mirah Dekor Pvt. Ltd.
208, Parvati Industrial Estate
Sunmill Compound, Lower Parel (W)
Mumbai 400 013 PAN : AABCM4362A

..... Appellant

v/s

Dy. Commissioner of Income Tax
Central Circle-2(1), Mumbai

..... Respondent

Assessee by : Shri K.P. Dewani
Revenue by : Ms. Mamta Bansal

Date of Hearing – 26.07.2021

Date of Order – 25.08.2021

ORDER

PER S. RIFAUR RAHMAN, A.M.

The present appeal preferred by the assessee challenging the impugned order dated 22nd August 2019, passed by the learned Commissioner (Appeals)-48, Mumbai, pertaining to the assessment year 2015-16.

2. The assessee has filed this appeal on the following grounds:-

"1. The learned CIT(A) was not justified in dismissing the appeal as "Not admitted.

2. The learned CIT(A) had never sought an application from the appellant as regards the reasons why the tax on the returned income had not been paid.

3. The appellant had been unable to pay the tax on the returned income due to circumstances beyond its control.

4. The learned CIT(A) may be directed to treat the appeal as filed on the date of payment of tax on the returned income, to condone the delay in filing the appeal and to decide the same on merits.

5. The appellant craves leave to add to, to alter or to amend the above grounds of appeal."

3. As it appears from the order of the Assessing Officer, the assessee company is engaged in trading in cloth / fabrics / furniture / gift articles and allied items and also engaged in generating wind power energy and supplying the same to MSED Co. Ltd. The assessee filed its return of income under section 139(1) of the Income Tax Act, 1961 (for short "*the Act*") on 31st January 2018, declaring total income of ₹ 3,95,84,310. The Assessing Officer concluded the assessment under section 143(3) of the Act on 28th December 2017, determining the total income of the assessee at ₹ 12,88,36,174 against the returned income at ₹ 3,95,84,310. A search action was conducted under section 132 of the Act in case of M/s. Luxora Infrastructure P. Ltd. and its associated group companies including promoters and directors. M/s. Luxora Infrastructure P. Ltd. is a joint venture between Mirah group and Soham group and it has been formed as an SPV for developing and integrated real estate project by the name "*Ensaara*

Metropark". The case was selected for scrutiny under compulsory category. The Assessing Officer made addition of an amount of ₹ 8,92,51,864, on account of bogus purchase and sales, commission on purchase and sales, disallowance under section 14A of the Act on the basis of paper found with one Shri Vijay Mishra. The assessee being not satisfied filed appeal before the first appellate authority.

4. The learned CIT(A) was of the opinion that since the assessee has not complied with the provisions of sub-clause (a) of section 249(4) of the Act, the appeal was not admitted by him. The observations of the learned CIT(A) is reproduced below for better appreciation of facts:—

"4 Appellate decision: The assessee has filed appeal electronically on 24.01.2013 and copy was filed manually on 29.01.2018.

It is seen that full tax on the income Returned has not been paid. As per column 88,1 (a), (b) & (c) of the electronically filed Form No.. 35, it is stated that tax due' is paid. The amount of tax paid is declared at Rs.49,17,78,766/-.

However, in the Manual Form no.35, filed in this office on 29.01.2018, it is stated that 'Tax due is not paid. Total Tax paid is shown as below:—

*TDS - Rs. 49,76,766/-
Regular Tax - 25,00,000/-*

The income Returned is 3,95,84,310/-. Apparently Total 'Tax Due' on returned income is not paid.

4.1 To verify the same, letter dated 21.08.2019 was issued to the A.O. for clarification regarding the payment of tax on returned income and to verify whether revised return has been

filed in this case or not.

As per A.Os reply it is seen that, payment of tax has not been made fully on returned income also no revised return has been filed for this A.Y. Thus it is clear that tax due on Returned Income is not fully paid.

4.2 As per section 249(4) "No appeal under this chapter shall be admitted unless at the time of filing of the appeal:-

a) where a return has been filed by the assessee, the assessee has paid the tax due on the income returned by him; or

b) where no return has been filed by the assessee, the assessee has paid an amount equal to the amount of advance tax which was payable by him:

Provided that, [in a case falling under clause (h) and] on the application made by the appellant in this behalf, the [Commissioner (Appeals) may, for any good and sufficient reason to be recorded in writing, exempt him from the operation of the provisions of [that clause].

In view of the above position of Law, assessee has not complied with sub clause (a) of section 249(4). Thus appeal of assessee is not admitted as sufficient condition given in sec. 249(4) is not fulfilled."

5. Considered the rival submissions and perused the material on record. It is brought to our notice that the assessee has paid the relevant tax after the order passed by the learned CIT(A). Since this defect is cured by the assessee, we are inclined to restore this issue to the file of the learned CIT(A) and direct him to decide the assessee's appeal on merit by giving proper opportunity of being heard. Accordingly, grounds raised by the assessee are allowed for statistical purpose.

6. In the result, assessee's appeal is allowed for statistical purposes.

Order pronounced in the open court on 25.08.2021

**Sd/-
MAHAVIR SINGH
VICE PRESIDENT**

**Sd/-
S. RIFAUR RAHMAN
ACCOUNTANT MEMBER**

MUMBAI, DATED: 25.08.2021

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

*Pradeep J. Chowdhury
Sr. Private Secretary*

True Copy
By Order

Assistant Registrar
ITAT, Mumbai