

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "E" MUMBAI
BEFORE SHRI S.RIFAUZ RAHMAN (ACCOUNTANT MEMBER) AND
SHRI RAVISH SOOD (JUDICIAL MEMBER)
ITA No.7006/MUM/2019
(Assessment Year: 2012-13)**

Twinstar Industries Limited
Plot No. EL-178, TTC MIDC
Industrial Area, Mahape,
Navi Mumbai – 400 701

DCIT, Circle-15(3)(1)
Vs. Aayakar Bhavan, M.K. Road,
Mumbai – 400 020

PAN No. AA ACT1529J

(Assessee)

(Revenue)

Assessee by : Shri Prakash Jhunjunwala, A.R
Revenue by : Shri B. Bagchi, D.R

Date of Hearing : 14/10/2021
Date of pronouncement : 25/10/2021

ORDER

PER RAVISH SOOD, J.M:

The present appeal filed by the assessee is directed against the order passed by the CIT(A)-24, Mumbai, dated 26.08.2019, which in turn arises from the order passed by the A.O u/s 143(3) r.w.s 147 of the Income Tax Act, 1961 (for short 'Act'), dated 11.12.2017. The assessee has assailed the impugned order on the following grounds before us:

"The appellant prefers an appeal against passed by Ld. Commissioner of Income Tax(A)-24, Mumbai vide order dated 26/08/2019 on following amongst other grounds each of which is without prejudice to any other :-

Additional Ground of Appeal :-

- 1.0 On facts and circumstances of the case and in law, the notice u/s 148 is bad-in-law since had been issued on the basis of incorrect information in absence of fresh tangible material and on borrowed satisfaction and without having reason to believe of escapement of income, thereby the re-assessment order passed u/s 147 is void-ad-initio;

Other Grounds :-

- 2.0 On facts and circumstances of the case and in law, Ld. CIT(A) erred in passing the order ex-parte without considering the adjournment application filed by the appellant in time and on ignoring the bonafide reasons and compelling circumstances which had precluded the appellant to participate in the appeal proceeding;
- 3.0 On facts and circumstances of the case and in law, Ld. CIT(A) erred in confirming the addition of alleged non-genuine loan given by the appellant to M/s Victory Sales Pvt. Ltd of Rs.30,50,000/-;
- 4.0 On facts and circumstances of the case and in law, Ld. CIT(A) erred in confirming the addition u/s 68 of alleged non-genuine loan received by the appellant from M/s Dolex Commercial Pvt. Ltd of Rs. 1,00,00,000/-;
- 5.0 On facts and circumstances of the case and in law, Ld. CIT(A) erred in confirming the addition of Rs.1,00,000/- in respect of unexplained commission paid on alleged non-genuine loan;
- 6.0 The Ld. CIT(A), before confirming the addition of loans given of Rs.30,50,000/- and loans received of Rs.1,00,00,000/- ought to have considered the understated vital facts, being;
 - a) The entire loans had been received and given through banking channel by A/c payee cheques;
 - b) The supporting documentary evidences such as confirmation of loan account, PAN, CIN master data, I.T acknowledgement receipts, bank statements and audited balance sheets of disputed parties are filed on record;
 - c) The Ld. AO did not carry any independent investigations and had not brought any contrary documentary evidence on record to disprove the transactions;
 - d) The addition made solely on the basis of statement of 3rd parties recorded at back of the appellant and without allowing an opportunity of cross examination cannot be relied upon.
- 7.0 Without prejudice, the addition sustained of alleged non genuine loan given of Rs.30,50,000/- and alleged non-genuine loan taken of Rs.1,00,00,000/- is unjustified and the addition utmost ought to have been restricted to the extent of incrementing credits on allowing the telescoping of disputed transactions;

The appellant craves leave to add, amend, alter and/or withdraw any of the grounds of appeal at the time of hearing.”

2. Briefly stated, the assessee company had e-filed its return of income for A.Y.2012-13 on 23.09.2012, declaring a total income of Rs.nil. The return of income filed by the assessee was processed as such u/s 143(1) of the Act. Subsequently, on the basis of information received by the A.O from the DGIT(Inv.), Mumbai, that the assessee had taken certain accommodation entries from M/s Victory Sales Pvt. Ltd., a concern that was subjected to search

proceedings u/s 132 of the Act, the case of the assessee was reopened u/s 147 of the Act.

3. During the course of the assessment proceedings, it was observed by the A.O that the assessee during the year under consideration had claimed to have received a loan of Rs.100,00,000/- from M/s Dolex Commercial Pvt. Ltd. Also, it was observed by the A.O that the assessee had claimed to have advanced a loan of Rs.30,50,000/- to M/s Victory Sales Pvt. Ltd. Observing, that both the aforementioned concerns, viz. (i) M/s Victory Sales Pvt. Ltd.; and (ii) M/s Dolex Commercial Pvt. Ltd. were managed and controlled by Shri Vipul Vidur Bhatt, an infamous accommodation entry provider, the A.O called upon the assessee to substantiate the genuineness of the aforesaid loan transactions. However, the reply filed by the assessee did not find favour with the A.O. On the basis of exhaustive deliberations it was observed by the A.O that the assessee in the garb of an unsecured loan had received an accommodation entry of Rs.1 crore from M/s Dolex Commercial Pvt. Ltd. Accordingly, the A.O made an addition of Rs.1 crore as an unexplained cash credit u/s 68 of the Act. As regards the loan of Rs.30.50 lacs that was claimed by the assessee to have been advanced to M/s Victory Sales Pvt. Ltd., it was observed by the A.O that Shri Vipul V. Bhatt (supra) in his statement recorded before the I.T. authorities had categorically admitted that the said company was being used to provide accommodation entries. Backed by the aforesaid facts, the A.O was of the view that the assessee had credited the aforesaid sum to M/s Victory Sales Pvt. Ltd. with a sole purpose of reversing an accommodation entry transaction in the form of cash. Accordingly, the A.O added the aforesaid amount of Rs.30.50 lac to the income of the assessee for the year under consideration. Apart from that, the A.O made an addition of Rs.1 lac on account of commission which the assessee would have paid for availing the accommodation entry of Rs. 1 crore from M/s Dolex Commercial Pvt. Ltd. On the basis of his aforesaid observations the A.O vide his

order passed u/s 143(3) r.w.s 147, dated 11.12.2017 assessed the income of the assessee company at Rs.nil (after set-off of business loss of Rs.1,88,43,495/-).

4. Aggrieved, the assessee carried the matter in appeal before the CIT(A). However, as the assessee despite having been intimated about the hearing of the appeal a/w reminders failed to participate in the appellate proceedings, therefore, the CIT(A) vide an ex-parte order dismissed the appeal.

5. The assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. The Id. Authorized Representative (for short 'A.R') for the assessee at the very outset submitted that the appeal have been disposed off by the CIT(A) without affording sufficient opportunity of being heard to the assessee. Elaborating on his aforesaid contention, it was submitted by the Id. A.R that the assessee was in receipt of a notice dated 09.08.2019 from the office of the CIT(A)-24, wherein it was intimated that the hearing of the appeal was fixed on 23.08.2019. It was submitted by the Id. A.R that the assessee had on 22.08.2019 filed an application seeking adjournment of the hearing of the aforesaid appeal. In order to fortify the aforesaid facts as were averred before us the Id. A.R took us through the relevant pages of the assessee's paper book (APB). It was submitted by the Id. A.R that despite the aforesaid request for adjournment the CIT(A) had proceeded with and had disposed off the appeal vide his order dated 26.08.2019. It was submitted by the Id. A.R that as the assessee had remained divested of a sufficient opportunity of being heard, therefore, in all fairness the matter may be restored to the file of the CIT(A) with a direction to re-adjudicate the appeal after affording a reasonable opportunity of being heard to the assessee.

6. Per contra, the Id. Departmental Representative (for short 'D.R') relied on the orders of the lower authorities.

7. We have heard the Id. Authorized Representatives for both the parties, perused the orders of the lower authorities and the material available on record. Admittedly, it is a matter of fact borne from the record that the appeal of the assessee was fixed for hearing on 23.08.2019 before the CIT(A)-24, Mumbai. As is discernible from the records, the assessee had e-filed an application dated 22.08.2019 seeking adjournment of the hearing of the aforesaid appeal before the CIT(A). However, we find that there is no reference of such adjournment application so filed by the assessee in the order of the CIT(A). Be that as it may, we are of the considered view that there was no justification on the part of the CIT(A) to have summarily brushed aside the aforesaid adjournment application of the assessee and therein proceed with and dispose off the appeal by way of an ex-parte order. In the backdrop of the aforesaid facts, we are of the considered view that the matter in all fairness requires to be restored to the file of the CIT(A) for fresh adjudication. We, thus, herein restore the matter to the file of the CIT(A) with a direction to re-adjudicate the appeal after affording a reasonable opportunity of being heard to the assessee. That as we have set aside the matter to the file of the CIT(A) for fresh adjudication, therefore, we refrain from advertent to the merits of the case.

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

Order pronounced in the open court on 25.10.2021

Sd/-
(S.Rifaur Rahman)
ACCOUNTANT MEMBER

Sd/-
(Ravish Sood)
JUDICIAL MEMBER

Mumbai;
Dated: 25.10.2021
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