

IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, MUMBAI
BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 1192/Mum/2020
(A.Y: 2010-11)

Final Copy (I) Pvt Ltd C/18, First Floor Royal Industrial Estate, SB Naigaon Cross Road, Wadala, Mumbai – 400031.	Vs.	ITO, Ward-6(3)(1) Room No. 524, 5 th Floor, Aayakar Bhavan, MK Marg, Mumbai – 400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACF7458		
Appellant	..	Respondent

Appellant by :	Mr.Gunjan Kakkad.AR
Respondent by :	Mr.Rajesh Kumar Yadav.DR

Date of Hearing	22.03.2022
Date of Pronouncement	25.03.2022

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

The assessee has filed the appeal against the order of the Commissioner of Income Tax (Appeals)-12, Mumbai passed 144 and 250 of the Act. The assessee has raised the following grounds of appeal:

- 1. The Hon. CIT(A) erred in deciding the appeal ex parte, dismissing the appeal for non-attendance, when the appellant could not attend the appeal proceedings due*

to reasonable cause being the ill health of the managing director of the company who was required to be hospitalized and therefore the appellant prays for setting aside of the order of the Hon. CIT(A), who may be kindly directed to decide the appeal on merits, after granting hearing to the appellant.

2. *The Hon. CIT(A) erred in not appreciating that the re-opening of assessment u/s 147, by issue of notice u/s 148 on 24.03.2015, was without any independent and valid belief on the part of the Id. AO that any income chargeable to tax has escaped assessment and therefore the re-opening of assessment was bad in law and the asst. order flowing therefrom was required to be quashed.*
3. *The Hon. CIT(A) erred in confirming the addition of **Rs.2,24,640/-**, made on account of alleged bogus purchases debited to the profit and loss account of the appellant, not appreciating that the concerned purchases were genuine purchases duly supported by substantial evidences and therefore no disallowance was justified and the consequent addition may kindly be deleted.*
4. *The Hon. CIT(A) erred in upholding the addition of **Rs.2,24,640/-**, made on account of alleged bogus purchases, without affording your appellant with any opportunity to cross examine the source of such adverse evidence, thereby breaching the silent principles of equity, fairplay and natural justice.*
5. *The Hon. CIT(A) erred in confirming the addition of **Rs.15,84,857/-**, u/s 36(1)(vii) of the I. T. Act, 1961 disallowing the amount of bad debts written off, inspite of the fact that appellant fulfills all the conditions of section 36(2) of the I. T. Act, 1961 and therefore the claim for bad debts amounting to Rs. 15,84,857/- is required to be allowed as deduction in computing the total income.*

6. *The appellant craves leave to add, alter, amend and/or vary the grounds of appeal at any time before the decision of the appeal.*

2. The brief facts of the case are that the assessee company is engaged in the business of readymade garments and allied products. The assessee has filed the return of income for the A.Y 2010-11 on 20.09.2010 disclosing a total income of Rs.15,330/- and the return of income was processed u/s 143(1) of the Act. Subsequently, the Assessing officer (A.O) has received information from DGIT(Inv), Mumbai that the assessee has obtained bogus purchase bills from M/s Deepali Enterprises and is a beneficiary. Therefore the A.O. has reason to believe that the income has escaped assessment and notice u/s 148 of the Act was issued and none appeared on behalf of the assessee. Further there is no compliance to notice u/s 142(1) of the Act as the said notice was returned by the postal authorities as it was unclaimed. Considering the facts and non appearance of the assessee, the A.O has applied the Best judgment u/s 144 of the Act and made 100% addition of bogus purchases of Rs. 2,24,640/-. Similarly the A.O. find that the assessee has debited bad debts of

Rs.15,84,857/- in the profit and loss account and there is no compliance. The A.O. observed that the bad debts claim is allowable U/sec 36(1) of the Act subjected to fulfillment of conditions specified u/sec 36(2) of the Act. Since no information was submitted by the assessee, the A.O. has disallowed the claim of bad debts and assessed the total income of Rs. 18,24,830/- and passed the order u/s 143(3) r.w.s 147 of the Act dated 22.03.2016.

3. Aggrieved by the order, the assessee has filed an appeal before the CIT(A). Whereas the CIT(A) relied on the grounds of appeal, findings of the A.O and has confirmed the action of the A.O and dismissed the appeal. Aggrieved by the CIT(A)order, the assessee has filed an appeal before the Honble Tribunal.

4. At the time of hearing the Ld.AR submitted that the CIT(A) has erred in confirming the addition without considering the facts and information. The Ld. AR submitted that the assessee has filed an application for admitting the additional evidence under Rule 29 of ITAT rules which could not be filed before the lower authorities and prayed for allowing the appeal.

Contra, the Ld. DR objected to the additional evidence and submitted that the A.O should be provided an opportunity of verification and examination of material information filed.

5. We heard the rival submissions and perused the material on record. The sole crux of the disputed issue envisaged by the Ld.AR that the A.O. has passed the order u/s 144 r.w.s 147 of the Act and on appeal, the CIT(A) has dismissed the appeal. The Ld.AR mentioned that the assessee could not submit the details before the lower authorities and made an application for admission of additional evidence under Rule 29 of the ITAT rules and the Ld. DR submitted that the additional evidence has to be verified by the Assessing officer. The Ld.AR contended that the assessee has good case on the merits and has explained the reasons for delay in filing the information and prima-facie the additional evidences in respect of purchases and bad debts play a vital role in the decision making. We considering the overall facts, and circumstances shall admit the additional evidence and the assessee should not be deprived its legitimate right to defend the case. Accordingly, to

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meet the ends of justice and considering the principles of natural justice, we shall restore the disputed issues to the file of the A.O along with the additional evidence for limited purpose to examine the material information and decide on merits. Further the assessee should be provided adequate opportunity of hearing and shall cooperate in submitting the information in the proceedings. And the grounds of appeal are allowed for statistical purposes.

6. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 25.03.2022.

Sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 25.03.2022

KRK, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)

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4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार / BY ORDER,

सत्यापित प्रति //True Copy//

1.

(Asst. Registrar)
ITAT, Mumbai