

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, "B", CHANDIGARH

BEFORE SHRI N.K. SAINI, VICE PRESIDENT &
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

आयकर अपील सं./ ITA No. 408/CHD/2021

निर्धारण वर्ष / Assessment Year : 2017-18

M/s Midas Agrofoods Pvt. Ltd, (formerly known as Shankar Rice and General Mills) Mudki Road, Bagha Purna, Distt. Moga	बनाम	The Pr. CIT, Ludhiana
स्थायी लेखा सं./PAN NO: AAGCR9325J		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

Hearing though video Conferencing

निर्धारिती की ओर से/Assessee by : Shri Vipin Gupta, CA
राजस्व की ओर से/ Revenue by : Sh. Sarabjit Singh, CIT

सुनवाई की तारीख/Date of Hearing : 19.04.2022
उदघोषणा की तारीख/Date of Pronouncement : 19.04.2022

आदेश/Order

PER N K SAINI, Vice President:

This is appeal by the assessee against the order dated 31.03.2021 of PCIT (Central) Ludhiana.

2. The Registry has pointed out that the appeal is time barred by limitation period of 198 days. The assessee had furnished an application dated 24.01.2022 requesting for Condonation of Delay in filing the appeal stating as under:-

*"The Assistant Registrar,
Income Tax Appellate Tribunal
Chandigarh Bench Kendriya Sadan,*

Sector 9A CHANDIGARH

Sir,

Re:

*M/s Midas Agrofoods Pvt. Ltd.,
(Formerly known as Shankar Rice & General Mills) PAN
AAGCR9325J
Mudki Road, Bagha purana, Moga.
APPELLANT*

Versus

*Principal Commissioner of Income Versus Tax (Central),
Ludhiana
RESPONDENT*

Assessment Year 2017-18

ITA No. 408/Chandi/2021

Sub: Request for condonation of delay in filing the appeal

We submit as under:-

- 1. Kindly refer to the show cause notice dated 20.12.2021 issued by the Hon'ble ITAT wherein we have been intimated that the appeal filed in the case is received in the ITAT Office by post on 27.12.2021 late by 198 days.*
- 2. That the account of M/s Midas Agro Foods Pvt Ltd having Office at Mudki Road, Baghapuran for past many years are handled by Mohd Riyazu Ddin Ansari S/o Sh. Noor Hasan Ansari, Resident of Near Masjid Arangi, Usia, Ghazipur, Zamania, UttarPradesh 232330.*
- 3. That the order was received by him in email. That I forgot to inform the same to the directors. That the email given by the company at the Income Tax Portal is accessed by him. That the Email ID & Login Password are with him only.*

That he was not feeling well and having fever since First Week of April,2021 & was on leave. He was tested positive for Covid-19 vide SRF ID No. 0303800115809 dated 21.04.2021. Copy of RT PCR Enclosed. Copy of Affidavit Enclosed.
- 4. That after being tested positive for Covid 19, He went on leave and went to his home town in Uttar Pradesh and joined office in Oct 2021.*
- 5. That in first week of Nov 2021, He came to know about the order u/s 263 dated 31.03.2021 and He also noticed that that the appeal has not been filed and informed the directors.*
- 6. That the appeal should have been filed within 60 days from 31.03.2021, but the same could not be filed due to delay happened due to Covid-19 on his part.*
- 7. That the delay was due to pandemic and the delay due to this bonafide reason, may please be condoned and oblige.*

*Thanking you,
Sd/-
Yours faithfully,
For Midas Agro Foods Pvt Ltds.
Sd/-
Kewal Krishan
Director”*

3. During the course of hearing, the Ld. Counsel for the assessee submitted that the delay occurred due to Covid-19 Pandemic, which was beyond the control of the assessee, therefore, the same may be condoned. The Ld. CIT DR, although, opposed the Condonation of Delay application moved by the assessee but could not controvert the contents mentioned in the said application.

4. After considering the submissions of both the parties, we are of the view that the delay in filing the appeal by the assessee occurred due to Covid 19 Pandemic which was beyond the control of the assessee, therefore, the delay in filing the appeal is condoned and the appeal is admitted.

5. Following grounds have been raised in this appeal:-

1. *That the initiation of proceedings u/s 263 by the Learned Pr. CIT (Central), Ludhiana are against the facts and bad in law.*
2. *That the Learned Pr. CIT (Central), Ludhiana has erred in initiating the proceedings & in passing the order u/s 263 of the IT Act, 1961 and directing the AO to assess the surrendered income during survey of Rs.2,52,30,6607-as unexplained income and tax the same under section 115BBE of the IT Act, 1961 and make fresh assessment.*

3. *That the Learned Pr. CIT (Central), Ludhiana has erred in finding that assessment already framed was erroneous & prejudicial to the interest of revenue as the assessment was framed by the AO after thorough investigation & proper application of mind.*
4. *That the worthy PCIT, Patiala has erred in applying the (Explanation 2) to section 263 inserted w.e.f 01.06.2015 as the concerned Assessing Officer had duly made appropriate enquiries and applied his mind and assessed the income offered during survey as business income.*
5. *That in any case the order of the Learned Pr. CIT (Central) passed u/s 263 is against the law and deserves to be quashed.*
6. *That the Appellant craves leave for permission to add, amend or alter any ground of appeal at the time of hearing.*

6. Facts of the case in brief are that a survey operation u/s 133A of the Act was conducted on 31.8.2016 along with the search operation in the case of M/s AP Group of cases at Dhuri, Ludhiana, Moga, Baghapurna and Jagraon etc. Notice u/s 142(1) of the Income Tax Act, 1961 (herein referred to as 'the Act') dated 5.12.2018 was issued to the assessee. In response, the AR of the assessee appeared and furnished the written submissions. The Assessing officer confronted the documents impounded u/s 133A of the Act and the information collected u/s 133(6) of the Act from the parties to the assessee. The Assessing officer observed that during the course of survey proceedings, stock inventory had been prepared, wherein, there was a difference of Rs. 1,61,54,950/- which was confronted to Sh. Kewal Krishana one of the then partners whose statement was recorded on 31.8.2016. The said discrepancy was admitted and offered as an additional income. Another amount of Rs.

50,83,917/- was surrendered on account of amount receivable from M/s Sodhi Trading Company, Samalsar, District Moga. The assessee also offered additional income of Rs. 11,31,647/- and Rs. 28,60,146/- on account of amount receivable from M/s Samadh Bhai & Company, Moga and M/s Bagha Ram Rajinder Paul respectively. According to the Assessing officer, there was a difference of Rs. 1,94,833/- in the aforesaid income surrendered and the actual amount surrendered vide letter dated 1.9.2016. The said amount was also added to the income of the assessee. The Assessing officer added another amount of Rs. 2,00,533/- on account of expenses. Accordingly, income was assessed at Rs. 2,27,30,656/-.

Thereafter, the Ld. PCIT initiated proceedings 263 of the Act. The Ld. PCIT observed that the assessment record revealed that the income of Rs. 2,25,30,123/- out of surrendered income of Rs. 2,52,30,660/- had been taxed on normal rates, though, the assessee had not submitted the complete details of unaccounted / unexplained stock-in-trade and receivables. Neither the details of purchases made from various persons nor the details of sales were shown during the assessment proceedings. The Ld. PCIT passed the impugned order ex-parte by observing as under:-

“18. There is plethora of decisions wherein the Hon'ble Courts have held that when the AO fails to make enquiries which should have been done in the background of relevant material raising suspicion, the order passed by the AO is liable to be set aside u/s 263 of the Act. The decisions relied for this proposition is as under:

Gee Vee Enterprises v. Addl. CIT [1975] 99 ITR 375 (Delhi), Addl. CIT v. Mukur Corpn. [1978] 111 ITR 312 (Guj.), Addl. CIT v. Krishna Narayan Naik [1984] 150 ITR 513/[1983] 15 Taxman 535 (Bom.), CIT v. Precision Finance (P.) Ltd. [1994] 208 ITR 465/[1995] 82 Taxman 31 (Cal.), IT v. Emery Stone Mfg. Co. [1995] 213 ITR 843/83 Taxman 643 (Raj.), Duggal & Co. v. CIT [1996] 220 ITR 456/[1994] 77 Taxman 331 (Del.).

19. *In view of the above, the impugned order in the case of the assessee for AY 2017-18 is held erroneous in as much as prejudicial to the interest of the revenue as the correct law has not been applied by the AO and the requisite inquiry as mentioned above have not been carried out by the AO. In view of the above discussion, I am of the considered view that the income of Rs. 2,52,30,660/- being unaccounted/ unexplained stock-in-trade and unaccounted/unexplained receivables is not taxable under the head business income unless the same is not duly corroborated by bills / challans / transport details / labour charges /debit / credit notes / vouchers / receipts, funds being received/ transferred through banking channels, etc. even though not recorded in books till the date of survey. In the case in hand, no such details have been found available on the record which substantiate the claim of the assessee that the surrendered income of Rs. 2,52,30,660/- being unaccounted / unexplained stock-in-trade and unaccounted/unexplained receivables is business income. Accordingly, I order that the surrendered income of Rs. 2,52,30,660/- being unaccounted/unexplained stock-in-trade and unaccounted/unexplained receivables, if not found duly corroborated by bills / challans /transport details / labour charges / debit / credit notes / vouchers/receipts, funds being received/transferred through banking channels, etc, and complete details of buyers and sellers then the same has to taxed under the head other sources and direct the AO to apply higher tax rate of 60% u/s 115BBE of the Act after examining the evidences and the materials on the record, conducting inquiries and verifications as directed above after affording sufficient opportunity of being heard to the assessee.”*

7. Now the assessee is in appeal.

8. The Ld. Counsel for the assessee, at the very outset, stated that no opportunity of being heard was provided by the Ld. PCIT, therefore, the impugned order passed is against the principles of natural justice. He drew our attention towards para 3 of the impugned order, wherein, the Ld. PCIT has stated that vide show cause notice the assessee was requested to appear personally or through authorised representative but nobody appeared neither any submissions were furnished. The Ld. Counsel for the assessee submitted that no notice for hearing was received by the assessee, therefore, the Ld. PCIT was not justified in deciding the case ex-parte.

9. In his rival submissions, the Ld. CIT DR strongly supported the impugned order passed by the Ld. PCIT and submitted that the impugned order has been passed on merits after considering the relevant material available on record and since the order passed by the Assessing officer was erroneous as well as prejudicial to the interest of Revenue, therefore, the Ld. Ld. PCIT rightly set aside the assessment order passed by the Assessing officer.

10. We have considered the submissions of both the parties and have also perused the material available on record. In the present case it is an admitted fact that the assessment was framed by the Assessing officer u/s 143(3) of the Act vide order dated 30.12.2018. Thereafter, the Ld. PCIT (Central) Ludhiana issued a show cause notice u/s 263 of the Act,

which is evident from page No 3 (para 3) of the impugned order, which reads as under:

“3. In view of the above, the assessee was provided an opportunity of being heard, through a show-cause notice u/s 263 of the Act that why provisions of Section 115BBE of the Act are not invoked on the surrendered income embedded in the assessed income. Vide show-cause notice the assessee was requested to appear personally or through the Authorized Representative and make submission, if any.

1. 1. In response to the show cause notice, neither any submission was received nor was any request for adjournment received though it was also informed through show cause notice that in case of non-compliance by the aforesaid date, it shall be presumed that the assessee has nothing to say in the matter and appropriate action as per law will be taken on the basis of material available on records and on merits.”

11. From the above said para, it would be clear that the Ld. PCIT nowhere mentioned that the notice for hearing was served upon the assessee. It appears that the impugned order had been passed ex-parte without providing due and reasonable opportunity of being heard to the assessee, which is against the principles of natural justice. It is well settled that nobody should be condemned unheard as per the maxim “*audi alteram partem*”. We, therefore, by keeping in view the principles of natural justice, deem it appropriate to set aside this case back to the file of the Id. PCIT to be adjudicated afresh in accordance with law after providing due and reasonable opportunity of being heard to the assessee.

12. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced on 19.04.2022.

Sd/-
(SUDHANSHU SRIVASTAVA)
Judicial Member

Sd/-
(N. K. SAINI)
Vice President

Dated : 19. 04.2022
“आर.के.”

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त/ CIT
4. आयकरआयुक्त (अपील)/ The CIT(A)
5. विभागीयप्रतिनिधि, आयकरअपीलीयआधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्डफाईल/ Guard File

आदेशानुसार/ By order,
सहायकपंजीकार/ Assistant Registrar