

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

ITA No. 484/Mum/2021

(A.Y: 2012-13)

MP Border Checkpost Development Company Ltd., The IL & FS Financial Centre, Plot C-22, G-Block, BKC, Bandra (E) Mumbai – 400051.	Vs.	ITO – 14(2)(2) 453, 4 th Floor, Aayakar Bhavan, Mumbai – 400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAGCM8030K		
Appellant	..	Respondent

Appellant by :	None
Respondent by :	Shri. Pramod Nikalje.DR

Date of Hearing	14.06.2022
Date of Pronouncement	15.06.2022

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 (Appeal) – 22, Mumbai passed u/s 143(3) and 250 of the Act. The assessee has raised the following grounds of appeal:

1. *On the facts and in the circumstances of the case and in law, the Learned Commissioner of Income-tax (Appeals)-22 ('CIT-A') erred in passing the order dated 28 February 2019*

without considering the facts available on record and submissions made by the appellant.

- 2. On the facts and in the circumstances of the case and in law, the Learned CIT-A erred in upholding the action of Assessing officer ('AO') qua treating the interest income earned by the appellant amounting to Rs. 5,18,209/- under the head "Income from other sources" instead of the head "Income from Business"*
- 3. On the facts and in the circumstances of the case and in law, the appellant prays that the addition made by the Learned AO and upheld by CIT-A amounting to Rs. 5,18,209/- under the head "Income from other sources" shall be deleted.*
- 4. On the facts and in the circumstances of the case and in law the appellant prays to restore the claim of the appellant that the sum of Rs. 5,18,209/- may be reduced from the total value of capital work in progress and the same shall not be taxed under the head "Income from other sources".*
- 5. Without prejudice to ground nos. 2 to 4, the appellant prays that the Learned CIT-A erred in rejecting the claim of the appellant that the interest payment be allowed as deduction against the interest income and the net interest income be charged to tax in lieu of Rs. 5,18,209/- under the head Income from Other Sources.*
- 6. Without prejudice to ground nos. 2 to 4, the appellant prays that on the facts and in the circumstances of the case and in law, that if the sum of Rs. 5,18,209/- is considered as chargeable to tax under the head "Income from other sources" then to such extent its expenditure on capital work in progress may be consequentially increased.*
- 7. On the facts and in the circumstances of the case and in law and without prejudice to ground nos. 2 to 6, the appellant prays that the learned CIT-A ought to have considered the appellant's claim of expenditure amounting to Rs. 1,50,000/- being Employee benefit expenses and Rs.69,56,389/- being Other Expenses totaling to Rs.*

71,06,389/- as allowable deduction under section 37 of the IT Act.

- 8. Without prejudice to Ground No.7, the appellant prays that the sum of Rs. 71,06,389/- be added to the capital work in progress and the same may be allowed to be carried forward as a part of capital work in progress.*
- 9. On the facts and in the circumstances of the case and in law, the appellant denies the liability for payment of interest u/s. 234D and prays that the interest levied of Rs. 14,155 shall be deleted*

The appellant craves the permission to add, alter, amend, modify, rescind, supplement, vary, withdraw or otherwise modify the grounds taken hereinabove either before or at the time of hearing of this appeal

2. The brief facts of the case are that the assessee company is engaged in the business of construction of Border Check post on BOT basis. The assessee has filed the return of income electronically for the A.Y 2012-13 on 24.09.2012 declaring a total income of Rs. Nil. Subsequently, the case was selected for scrutiny under CASS and notice u/s 143(2) and 142(1) of the Act along with questionnaire was issued. In compliance to the notice the Ld. AR of the assessee appeared from time to time and submitted the details and the case was discussed. The AO on perusal of the financial statements found that the interest income was not offered for taxation and was reduced

from the capital work-in-progress (WIP). Further the A.O. relied on Form.No.26AS and the explanations were filed by the assessee on 16.02.2015 in respect of Bank deposits and interest income. But the AO is of the opinion that the income cannot be allowed to the set off against the capital work in progress and finally observed that the interest income of Rs. 5,18,209/- is taxable under income from other sources and assessed the total income of Rs.5,18,210/- and passed the order u/s 143(3) of the Act dated 23.03.2015.

3. Aggrieved by the order, the assessee has filed an appeal with the CIT(A), the CIT(A) considered the grounds of appeal, submissions of the assessee and issued notice to the assessee but there was no compliance and therefore considering the information on record has confirmed the action of the A.O and dismissed the appeal. Aggrieved by the order of the CIT(A), the assessee has filed an appeal before the Hon'ble Tribunal.

4. At the time of hearing, none appeared on behalf of the assessee and the Ld.DR supported the order of the CIT(A).

5. We heard the Ld. DR submissions and perused the material on record. Prima-facie the CIT(A) has passed the order considering the fact that there is no appearance in spite of providing adequate opportunity of hearing and the notices were issued. Therefore, the CIT(A) was of the opinion that the assessee is not interested in prosecuting the appeal and dismissed the appeal ex-parte confirming the action of the assessing officer. We find the Ld.CIT(A) has issued the notices of hearing referred at page 2 of the order, but there was no response and thus the Ld.CIT(A) came to a conclusion that the assessee is not interested and decided the appeal based on the information available on record. We find that the assessee has raised grounds of appeal challenging the additions of the assessing officer and there could be various reasons for non appearance which cannot be overruled. We considering the principles of natural justice shall provide one more opportunity of hearing to the

assessee to substantiate the case before the CIT(A) along with evidences and information. Accordingly, we set aside the order of the CIT(A) and remit the entire disputed issues to the file of the CIT(A) to adjudicate afresh on merits and the assessee should cooperate in submitting the information for early disposal of the appeal and allow the grounds of appeal of the assessee statistical purposes.

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

Order pronounced in the open court on 15.06.2022.

Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 15.06.2022

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)
4. आयकर आयुक्त(अपील) / Concerned CIT

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5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, Mumbai / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

(Asst. Registrar)
ITAT, Mumbai