

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A" MUMBAI**

**BEFORE SHRI KULDIP SINGH (JUDICIAL MEMBER) AND
SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)**

**ITA No. 1485/MUM/2022
Assessment Year: 2009-10**

Ambitious Plastomac Company
Ltd.,
405, Royal Square, Nr. JBK Arcade,
Science City Road, Sola,
Ahmedabad-380 060.
PAN No. AAACA 3237 A
Appellant

The DCIT, CC-39,
Mumbai.

Vs.

Respondent

Assessee by : None
Revenue by : Mr. Manoj Kumar Sinha, DR

Date of Hearing : 24/08/2022
Date of pronouncement : 27/09/2022

ORDER

PER OM PRAKASH KANT, AM

This appeal by the assessee is directed against order dated 22.03.2022 passed by the Ld. Commissioner of Income-tax (Appeals)-54, Mumbai [in short 'the Ld. CIT(A)'] for assessment year 2009-10, raising following ground:



1. *The Ld. ITO and CIT(A)-54 erred in law and on facts in passing the assessment order u/s 144 of IT Act, 1961 which is requested to be quashed.*
2. *The Ld. ITO and CIT(A)-54 erred in law by making the addition of ₹2,39,553/- being disallowance of various expenses.*
3. *Prayer :-*
 - i. *To set-aside the assessment order u/s 144 of the IT Act, 1961 passed by the DCIT, CC-49, Mumbai.*
 - ii. *To drop the addition of ₹2,39,553/- being disallowance of various expenses.*

2. At the outset, we may like to mention that despite notifying none attended on behalf of the assessee and therefore, appeal was heard *ex-parte* qua the assessee, after hearing arguments of the Ld. Departmental Representative (DR).

3. Briefly stated, the facts of the case are that the assessee was engaged in business of manufacturing baby care products. For the year under consideration no return of income was filed by the assessee. The case was selected by the Assessing Officer under compulsory scrutiny and thereafter he issued statutory notices



under the Income-tax Act, 1961 (in short 'the Act'). The Assessing Officer has noted that in assessment year 2008-09 also no compliance was made by the Assessing Officer except a letter wherein the company stated that assessee was a sick unit and closed for more than 7 years. There was no purchase or sale or business activity and company and factories were seized by banks and no return of income was filed for last 5 years. The assessee also reported that a Promoter Director Mr. Girish J. Mehta was expired in the month of June 2009 and therefore, company was facing various litigation and liquidation problem. In the year under consideration, the Assessing Officer issued notice u/s 271(1)(b) of the Act also but that was not responded. In view of no information in respect of notices proposing addition, the Assessing Officer completed the assessment in terms of section 144 of the Act (i.e. the best judgment assessment) and estimated the total income at ₹11,00,000/- on the basis of records of earlier assessment year including for AY 2008-09.



On further appeal, the assessee filed additional evidence before the Ld. CIT(A) giving details of commission income and other expenses incurred for protecting its assets from extinction. The Ld. CIT(A) partly allowed the expenses of ₹8,08,887/- and in respect of other expenses in absence of any evidences in support thereof, the Ld. CIT(A) sustained the addition of ₹2,39,553/-.

4. Aggrieved, the assessee is in appeal before the Tribunal.

5. We have heard the submission of the Ld. DR and perused the relevant material on record. We find that the Ld. CIT(A) has sustained the addition of ₹2,39,553/- observing as under:

“12. The facts of the issue involved, the finding of the AO in the assessment order and the submission made by the appellant are identical to that in A.Y. 2008-09 in the case of the appellant. For A.Y. 2008-09, the issue involved is discussed at length in para 5.1 to 5.3.2 of this appellate order. On the same issue the appeal of the appellant has been partly allowed for A.Y. 2008-09. Thus, following the appellate order us 250 of the Act in the case of the appellant for A.Y. 2008-09, expenses in respect of director expenses of Rs.63,972 /-, internet expenses of Rs.6,797/-, miscellaneous expenses of Rs. 10,222/-, mobile



expenses of Rs.39,187/-, telecommunication charges of Rs.33,975/- and general expenses of Rs.85,400/- totaling to Rs.2,39,553/- cannot be allowed as business expenditure. Thus, out of the total addition of Rs. 11,00,000/-, addition of Rs.2,39,553/- is upheld and the balance addition of Rs.8.60.447/- is deleted.”

5.1 We find that the Ld. CIT(A) has followed his finding in assessment year 2008-09, where he has observed as under:

“5.3.1 The facts of the case are that that the assessee had not filed return of income for A.Y.2008-09. The AO had issued notice u/s.143(2) of the Income-tax Act, 1961 and it was reportedly served on the appellant by speed post on 27.05.2009. Further, the AO had issued notice u/s.142(1) dated 26.07.2010 and the hearing was fixed on 05.08.2010. However, nobody attended nor any submission was filed by the appellant. Further, notice u/s.142(1) dated 23.08.2010 was issued and served on the appellant. In response to the notice u/s.142(1), the assessee submitted a reply vide letter dated 31.08.2010 stating only general business conditions of the appellant. Thereafter, the AO issued notice u/s.271(1)(b) on 24.09.2010 so as to levy penalty for non compliance of notices u/s.143(2) and 142(1). The AO also issued a showcause notice dated 24.09.2010 asking the assessee as to why the assessment proceedings should not be finalized us. 144 of the Act. Even in response to showcause notice, the assessee did not respond and make any submission. Accordingly. the AO has passed the order us. 144 of the Income-tax Act and made an estimated of Rs.10 lakhs on the



basis of available records including the records relevant to A.Y.2007-08.

During the appellate proceedings, it is submitted that the operations of the company were closed from the year 1999-2000. The factories as well as the office premises were seized by various banks and financial institutions. Further, the promoter director of the company, Shri Girish J. Mehta died in the month of June, 2009 and also due to non payment of his professional fees, the CA did not properly communicate. Further, there has been change in the management of the appellant company. Accordingly, it has tried to justify the non compliance to the notices u/s.143(2) and 142(1) of the Income-tax Act, 1961.

As discussed above, the appellant has not filed the return of income for the A Y 2003-09. The various notices u/s.143(2) and 142(1) were issued by the AO for which there was non compliance on the part of the appellant. Further, a showcause notice intimating the appellant to pass the order us.144 of the Act issued by the A also remained non-complied. The non compliance of notices on the part of the appellant lead to best judgement order u/s.144 of the Income-tax Act, 1961.

The AO had provided sufficient opportunities to the appellant to make the submissions in response to the queries raised by the AO. The AO has specifically mentioned in assessment order that throughout the course of assessment proceedings, the assessee had defaulted at multiple instance in response to various statutory notices issued in its case leading to inordinate delay in completion of assessment proceedings. However, the appellant had not complied to the notices us.142(1) and 144 issued by the AO. In view of the above. the Assessment Order u/s.



144 was passed by the AO after providing sufficient opportunities of being heard to the appellant. Thus, the Assessment Order passed by the AO us. 144 of the Act is a valid order and it is upheld.

5.3.2 The AO has made an addition of Rs. 10 lakhs on estimated basis based on the records relevant to A. Y.2008-09.

During the appellate proceedings, the appellant had submitted copies of the audited balance sheet and profit and loss account for the A.Y.2008-09 alongwith the evidences of litigations of various banks and financial institutions. These additional evidences were forwarded to the AO for remand report. However, till date, no remand report has been received from the AO. Therefore, these grounds of appeal are decided on the basis of material available on record and the merits of the case.

It is submitted by the appellant that that the operations of the company were closed from the year 1999-2000. The factories as well as the office premises were seized by various banks and financial institutions. Further, the promoter of the company, Shri Girish J. Mehta died in the month of June, 2009 and also due to non payment of fees, the CA did not properly communicate. Further, there has been change in the management of the appellant company. The appellant has explained the reason for non furnishing of the return for A.Y.2008-09 and non compliance during the assessment proceedings before the AO. From the copy of letters from Development Credit Bank, Resolution Commercial Management Pvt. Ltd., Asset Resolution Company(India) Ltd. and Cosmos Co-operative Bank Ltd., it is seen that the various litigations with respect to recovery of dues from the appellant



company were initiated by various banks. It is also noticed that office premises of the appellant situated at 119-120, Yashwant Shopping Center, 7th Carter Road. Borivali. Mumbai 400 066 and the factory premises located at Survey No.274, Plot No.6 to 9. Satguru Industrial Estate, Ukharia, Talaja Road, Bhavnagar, Gujarat were attached and sealed by various banks and financial institutions.

Further, the appellant has submitted copies of audited balance sheet and profit and loss account. . The accounts were audited by Vishves A. Shah, proprietor of M/s. Vishves A Shah & Co, Chartered Accountants. The audit report was signed on 28.08.2008. From the audited balance sheet and profit and loss account, it is seen that during the year, the appellant company had carried out certain business activities and shown income of Rs.1,46,500/- being Commission/Brokerage. The expenses incurred during the year have been given by the appellant in its written submissions, which is reproduced as under:

Sr. No.	Expenses	Amount	Amount	Remarks
1.	Opening Stock	37,869/-	37,869/-	Related to business activity
2.	Administrative expenses			
	Audit Fees	6,500		Statutory Expenses
	Director Expenses	33,531		Related to business activity
	Electricity Charges	65,701		Related to business activity
	Internet Expenses	1,685		Related to Business activity
	Legal Expenses	56,500		Statutory Expenses
	Misc Expenses	56,226		Related to business activity
	Telecommunication Charges	43,589		Related to business activity
	General Expenses	1,348	3,19,814	Related to business activity
3.	Finance Charges			
	Bank Charges	4,303	4,303	Related to business activity
4.	Depreciation	6,72,445	6,72,445	Related to business assets
	Total		10,34,431	

From the above expenses, it is seen that the expenses of audit fees of Rs.6,500/-, electricity expenses of Rs.65,701/-, legal expenses of Rs.56,500/-, bank charges of Rs.4,303/- and depreciation of



Rs.6,72,445/- were required to be incurred for day to day business activities. Therefore, these expenses cannot be disallowed. However, in respect of director expenses of Rs.33,531/, internet expenses of Rs. 1,685/- S iscellaneous expenses of Rs.56,226/-, mobile expenses of Rs.54,734/-, telecommunication charges of R\$.43,589/- and general expenses of Rs. 1,348/- totaling to Rs.1,91.113/-, the appellant has not provided any further details or supporting evidences to justify these expenses. In order to qualify for business expenditure u/s.37 of the Income-tax Act, the appellant is required to justify the claim with supporting evidences showing that these expenses were infact incurred for business purpose. In the absence of any supporting evidences, the expenses amounting to Rs.1,91,113/- cannot be allowed as business expenditure.

The AO has merely made an estimated addition of Rs.10 lakhs without any basis.

Therefore, the entire addition of Rs.10 lakhs cannot be sustained, but the action of the AO to the extent of disallowance of business expenses of Rs.1,91,113/- is upheld.

In view of the above, out of the addition of Rs. 10 lakhs, addition of Rs.1,91,113/- is upheld and the balance addition of Rs.8,08,887/- is deleted. Therefore, these grounds of appeal are partly allowed.”

5.2 We find that the Ld. CIT(A) in assessment year 2008-09 has sustained disallowance of expenses mainly on the ground that the assessee failed to file details or supporting evidence to justify those



expenses. We find that Tribunal in AY 2008-09 has restored this issue to file of the AO in ITA No. 1484/Mum/2022 observing as under:

“5. I notice that the grievance of the assessee is that the above said sum of Rs.1,91,113/- is also required to be allowed. I notice that the Ld CIT(A) has disallowed this amount on the reasoning that the assessee has not substantiate the same. Under these set of facts, I am of the view that the assessee may be provided with an opportunity to furnish the details of these expenses before the AO and substantiate the same. Accordingly, I set aside the order passed by Ld CIT(A) on the above said addition of Rs.1,91,113/- and restore the same to the file of the AO for examining the claim of the assessee by duly considering the information and explanations that may be furnished by the assessee. After providing adequate opportunity of being heard to the assessee, the AO may take appropriate decision in accordance with law.”

5.3 Respectfully following the finding of the Tribunal (supra), the issue-in-dispute in the year under consideration is restored to the file of the AO for deciding afresh after considering explanation of the assessee. The ground is accordingly allowed for statistical purposes.



5.4 In ground No. 1, the assessee challenged the action of the Assessing Officer u/s 144 of the Act. According to the Assessing Officer, assessment made by the Assessing Officer should have been quashed. We find that the Ld. CIT(A) in assessment year 2008-09 has upheld the assessment order passed by the Assessing Officer u/s 144 of the Act observing as under:

“5.3.1 The facts of the case are that that the assessee had not filed return of income for A.Y.2008-09. The AO had issued notice us.143(2) of the Income-tax Act, 1961 and it was reportedly served on the appellant by speed post on 27.05.2009. Further, the AO had issued notice u/s.142(1) dated 26.07.2010 and the hearing was fixed on 05.08.2010. However, nobody attended nor any submission was filed by the appellant. Further, notice u/s.142(1) dated 23.08.2010 was issued and served on the appellant. In response to the notice u/s.142(1), the assessee submitted a reply vide letter dated 31.08.2010 stating only general business conditions of the appellant. Thereafter, the AO issued notice u/s.271(1)(b) on 24.09.2010 so as to levy penalty for non compliance of notices u/s.143(2) and 142(1). The AO also issued a showcause notice dated 24.09.2010 asking the assessee as to why the assessment proceedings should not be finalized us. 144 of the Act. Even in response to showcause notice, the assessee did not respond and make any submission. Accordingly, the AO has passed the order us. 144 of the Income-tax Act and made an estimated of Rs.10 lakhs on the



basis of available records including the records relevant to A.Y.2007-08.

During the appellate proceedings, it is submitted that the operations of the company were closed from the year 1999-2000. The factories as well as the office premises were seized by various banks and financial institutions. Further, the promoter director of the company, Shri Girish J. Mehta died in the month of June, 2009 and also due to non payment of his professional fees, the CA did not properly communicate. Further, there has been change in the management of the appellant company. Accordingly, it has tried to justify the non compliance to the notices u/s.143(2) and 142(1) of the Income-tax Act, 1961.

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The AO had provided sufficient opportunities to the appellant to make the submissions in response to the queries raised by the AO. The AO has specifically mentioned in assessment order that throughout the course of assessment proceedings, the assessee had defaulted at multiple instance in response to various statutory notices issued in its case leading to inordinate delay in completion of assessment proceedings. However, the appellant had not complied to the notices us.142(1) and 144 issued by the AO. In view of the above. the Assessment Order u/s.



144 was passed by the AO after providing sufficient opportunities of being heard to the appellant. Thus, the Assessment Order passed by the AO us. 144 of the Act is a valid order and it is upheld.”

5.5 In view of non-compliance by the assessee of the notices u/s 142(1) of the Act, the Assessing Officer is justified in passing the assessment order u/s 144 of the Act even without issuing final show cause notice. Accordingly, we do not find any error in the order of the Ld. CIT(A) in sustaining the action of the Assessing Officer of passing order u/s 144 of the Act. The ground No. 1 of the appeal of the assessee is accordingly dismissed.

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

Order pronounced in the open Court in 27/09/2022.

Sd/-

**(KULDIP SINGH)
JUDICIAL MEMBER**

Sd/-

**(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;

Dated: 27/09/2022

Rahul Sharma, Sr. P.S.



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.

//True Copy//

BY ORDER,

(Sr. Private Secretary)
ITAT, Mumbai