

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "SMC", MUMBAI

BEFORE SHRI KULDIP SINGH (JUDICIAL MEMBER)

I.T.A No.2365/Mum/2022  
(Assessment year 2014-15)

TERROIR WINERIES PVT LTD 13, yashodhara, 80, C.S.Veer SAVARKAR ROAD, DADAR WEST MUMBAI-400 028 <b>PAN : AACCT2269H</b>	<b>vs</b>	ACIT, CIRCLE 8(3)(1), AAYAKAR BHAVAN, M.K. ROAD, MUMBAI-400 020
------------------------------------------------------------------------------------------------------------------------------------	-----------	-----------------------------------------------------------------------

Assessee represented by	Shri Abhishek Jhunjunwala
Revenue represented by	Shri Rajendra Chandekar

Date of hearing	01/11/2022
Date of Pronouncement	01/11/2022

**ORDER**

The Appellant, Terroir Wineries Pvt Ltd (hereinafter referred to as the 'assessee') by filing the present appeal, sought to set aside the impugned order dated 14/07/2022 passed by National Faceless Appeal Centre, Delhi [hereinafter referred to as the 'CIT(A)'] qua the assessment order for Assessment Year 2014-15 on the grounds interalia that :-

"The appellant prefers an appeal against an order passed by Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi dated 14/07/2022 on various grounds each of which are without prejudice to any other :-

1.0 On facts and circumstances of the case and in law, Ld. CIT(A) erred in passing the appeal order exparte and sustaining the entire additions made in assessment order, without considering the bonafide reasons and compelling circumstances precluding the appellant to participate in the appeal proceeding;

2.0 On facts and circumstances of the case and in law, Ld. CIT(A) erred in confirming the addition u/s.68 of unsecured loans received of Rs.36,14,383/-;

3.0 On facts and circumstances of the case and in law, Ld. CIT(A) ought to have : allowed the set-off u/s.71 (1) of the assessed business loss of Rs.(-) 31,25,339/-with the addition made in assessment u/s, 68 of Rs.36,14,383/-."

2. Briefly stated, the facts necessary for adjudication of the issues at hand are:

The assessee company is into the business of manufacturing wine. During the year under consideration, assessee, by filing return of income has shown loss from business at (-) Rs.34,57,339/-. The Assessing Officer, called the details of loss and various expenses claimed in the return and after examining the same proceeded to disallow Rs.3,32,000/- claimed by the assessee as label registration charges and also made addition of Rs.36,14,383/- by way of disallowance of unsecured loan being bogus transaction under section 68 read with section 115BBF of the Act and thereby framed the assessment under section 143(3) of the Act.

3. Assessee carried the matter before the Ld.CIT(A) by filing appeal who has dismissed the same on the premise that the assessee's appeal has become infructuous-

- Feeling aggrieved, the assessee has come up in appeal before the Tribunal by way of filing present appeal.

5. We have heard the learned representatives of the parties to the appeal, perused the orders passed by learned lower Revenue Authorities and documents available on the record in the light of the facts and circumstances of the case.

6. Bare perusal of the order passed by the Ld.CIT(A) particularly para 5.3 goes to prove that this appeal has not been decided by Ld.CIT(A) on merit, rather, he has decided the same for non prosecution by the assessee on the ground that 5

notices were sent to the assessee, but none appeared on behalf of it. Further perusal of para 5.1 shows that all the notices were sent through ITBA but remained uncomplished with. Nowhere it is mentioned that any further effort was made to get the assessee served with notice. I am of the considered view that in the absence of any material on record that the assessee was duly served with notice, he cannot be condemned unheard. To decide the issue once for all and to curtail the multiplicity of the proceedings, the case is required to be remanded back to the Ld.CIT(A) to decide afresh on merit. Even otherwise, Ld.CIT(A) was required to decide the appeal on merit even if the assessee is presumed to have not attended the proceedings.

7. Resultantly, appeal filed by the assessee is allowed for statistical purpose.

Sd/-

(KULDIP SINGH)  
JUDICIAL MEMBER

Mumbai, Dt : 01 November, 2022  
Pavanan

Copy to :

1. The appellant
2. The respondent
3. The CIT concerned
4. The CIT(A)
5. DR,SMC Bench
6. Guard File

(True copy)

By order

Dy.Registrar / Asstt.Registrar  
ITAT, Mumbai Benches