

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "B", MUMBAI
BEFORE SHRI ABY T VARKEY, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER
ITA No. 251/Mum/2022 (A.Y. 2012-13)

M/s Ravechi Floritech Pvt. Ltd.
1st Floor, Mangaldas Estate, 397,
D.B. Marg, Naaz Cinema Compound,
Grant Road (E), Mumbai-400004.

PAN: AABCR0378Q

..... Appellant

Vs.

ITO-18(1)(1),
Aayakar Bhavan, M.K. Road,
Mumbai-400020.

..... Respondent

| | | |
|-----------------------|---|----------------------------|
| Appellant by | : | Sh. Vimal Punmiya |
| Respondent by | : | Sh. Chetan M. Kacha, Sr.DR |
| Date of hearing | : | 18/07/2022 |
| Date of pronouncement | : | 06/10/2022 |

ORDER

PER GAGAN GOYAL, A.M:

This appeal by the assessee is directed against the order of National Faceless Appeal Centre-Delhi [hereinafter referred to as ['NFAC'] dated 31.10.2021 passed under section 250 of the Income Tax Act, 1961 (hereinafter referred to as ['the Act'] for the Assessment Year (AY) 2012-13. 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 (Appeal) erred in confirming addition of Rs. 12136898/- made by the Assessing Officer by invoking provisions of section 41(1) of the Act. Provisions of the Act ought to have been properly construed and regard being had to facts of the case no such addition should have been confirmed.

2. On the facts and in the circumstances of the case and in law the learned Commissioner of Income Tax (Appeals) erred in confirming conclusion so arrived at by the Assessing Officer that waiver of outstanding principal sum of Rs 12136898/- is cessation of liability and therefore provisions of section 41(1) are applicable in the present case.

3. On the facts and in the circumstances of the case and in law the learned Commissioner of Income Tax (Appeals) erred in confirming addition of Rs, 12136898/- made by the Assessing Officer under section 41(1) of the Act in spite of the fact that said amount has not been transferred to General Reserve in the current financial year i.e. 2011-12 relevant to AY 2012-13.

4. On the facts and in the circumstances of the case and in law the learned Commissioner of Income Tax (Appeals) erred in arriving at the conclusion that not a single notice has been responded to and thereby dismissing appeal of the appellant in limeline and not on merit of the case

5. On the facts and in the circumstances of the case and in law the learned Commissioner of Income Tax (Appeals) erred in confirming order made under section 143(3) of the Act by the learned Assessing Officer which is illegal, bad-in-law, ultra vires, without allowing reasonable opportunity of the hearing, without appreciating facts, submission and evidences in their proper perspective, is liable to be annulled.

6. The learned assessing officer erred in charging interest under section 234A, 2346, 234C and 234D of the Act.

7. The appellant crave leave to add, amend, alter and / or vary any of the grounds of appeal before or at the time of hearing.”

2. Brief facts of the case are that the assessee filed its return of income on 23.03.2014 declaring total income at Rs. 28,800/-. The case was assessed under section 143(3) with an addition of Rs. 1,21,36,898/-. The assessee company is

stated to be engaged in the business of agriculture since inception i.e. FY 1998-99. The assessee is a 100% EOU for growing flowers and vegetables. It has taken on lease about 40 acres of land in Bhaliwadi village in Karjat which is about 80 kilometres away from Mumbai.

3. During the year under consideration assessee availed One Time Settlement Scheme (OTS) with its banker IDBI Ltd. out of this OTS assessee got a benefit of Rs.1,21,36,898/- i.e. amount waived. Assessee carried this amount to its general reserve, treated the same as Revenue neutral. AO treated the same as taxable under section 41(1)/28(iv) of the Act. Aggrieved with the decision of the AO, assessee preferred an appeal before the Ld. CIT(A).

4. The Ld. CIT(A) in his order categorically mentioned that notices were issued to the assessee for its submission vide dated 15.01.2021, 07.07.2021, 24.09.2021 and 27.10.2021. However, on behalf of assessee, non appeared resultantly Ld. CIT(A) dismissed the appeal filed by assessee vide his order dated 31.10.2021. Against this dismissal, assessee approached ITAT through this appeal.

5. We have gone through the grounds of appeal taken by the assessee as mentioned (supra), vide Ground No. 4 & 5 assessee is challenging the fact as mentioned by Ld. CIT(A) that not even a single notice has been responded thereby dismissing appeal of the assessee *in limine* and not on merit of the case. Further assessee is also challenging the assessment order on ground of reasonable opportunity, non-appreciation of facts etc.

6. We have considered the order of the AO, order of the Ld. CIT(A) and submission of assessee before AO, Ld. CIT(A) and ITAT. We found that none was appeared before the Ld. CIT(A) but relevant submissions in the form of Paper

Book was filed before the Ld. CIT(A) which he ignored while deciding the issue ex-parte. In view of the above, as the relevant papers were there on record before the Ld. CIT(A) still a non-speaking appeal order was passed which is not appropriate.

7. In the light of above, we restore the matter back to the file of Ld. CIT(A) for fresh adjudication on relevant issue only after giving a proper opportunity to the assessee and considering the documents already submitted by the assessee or he may further submit fresh set of submissions/documents.

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

Order pronounced in the open court on 6th day of October, 2022.

Sd/-

(ABY T VARKEY)
JUDICIAL MEMBER

Mumbai, दिनांक / Dated: 06/10/2022

SK, Sr.PS

Copy of the Order forwarded to:

1. अपीलार्थी / The Appellant ,
2. प्रतिवादी / The Respondent.
3. आयकर आयुक्त (अ) / The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई / DR, ITAT, Mumbai
6. गार्ड फाइल / Guard file.

Sd/-

(GAGAN GOYAL)
ACCOUNTANT MEMBER

BY ORDER,

//True Copy//

(Dy. /Asstt. Registrar)
ITAT, Mumbai