

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

ITA No. 946/Mum/2022
(A.Y: 2014-15)

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| SGN Distributors 105, Veena Beena Shopping Centre, Opp Bandra Rly Stn, Bandra (W), Mumbai – 400050. | Vs. | ITO – 23(3)(3) Mumbai-400021. |
| स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ADWPR3175L | | |
| Appellant | .. | Respondent |

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|---------------|---------------------|
| Assessee by : | Mr.Vimal Punmiya.AR |
| Revenue by : | Ms.Richa Gulati.DR |

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| Date of Hearing | 20.12.2022 |
| Date of Pronouncement | 29.12.2022 |

आदेश / O R D E R

The assessee has filed the appeal against the order passed by the National Faceless Appeal Centre (NFAC) – Delhi / CIT(A) u/s 143(3) r.w.s 147 and 250 of the Act. The assessee has raised the following grounds of appeal:

Ground No. 1: Reopening is bad in law

1. On the facts and circumstances of the case and in law, the learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre [hereinafter referred to as "the Ld. CIT(A)"] for sake of brevity] has erred in

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confirming the action of Income-tax Officer 23(3)(3), Mumbai (hereinafter referred to as "the AO" for sake of brevity).

2. On the facts and circumstances of the case and in law, the Appellant submits that reopening is bad in law.

3. On the facts and circumstances of the case and in law, the AO and CIT(A) has erred in not appreciating the fact that reopening results in civil consequences, disturbs the vested right of finality of the Assessee and thus, he could not have relied upon the material obtained without independent application of mind.

Ground No. 2: Addition to total income is not sustainable

4. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in confirming the addition made by the AO.

5. On the facts and circumstances of the case and in law, the Appellant submits that no income chargeable to tax has escaped assessment. The Appellant submits that transaction is genuine and thus, no addition to total income is called for.

6. On the facts and circumstances of the case and in law, the Appellant submits that AO has erred by solely relying upon information received without independently considering the submissions made by the Appellant during the course of assessment proceedings.

Ground No. 3: Violation of principles of natural justice

7. On the facts and circumstances of the case and in law, the AO has erred in not providing opportunity of cross examination, not providing the Appellant with all the

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material and simply relied upon the information without independent application of mind.

8. On the facts and circumstances of the case and in law, the Appellant submits that the AO is duty bound to provide the material relied upon sup moto and that the additions in the present case without following the principles of natural justice are non-est and bad in law.

9. On the facts and circumstances of the case and in law, the Appellant submits that failure to comply with natural justice cannot be made good under appeal. The Appellant submits that the assessment order passed is invalid and thus, be quashed and set aside.

The Appellant craves leave to add, to alter and / or amend all or any of the foregoing grounds of appeal.

2. The brief facts of the case are that the assessee is a partnership firm and is engaged in the business of trading in enameled copper wire and aluminum copper wire. The assessee has filed the return of income for the A.Y 2014-15 disclosing a total income of Rs.13,740/- and the return of income was processed u/s 143(1) of the Act. Subsequently the Assessing Officer (AO) has received information from DGIT (Inv), Mumbai that in a search and seizure action in the case of Bhanwarlal Jain Group on 3-10-2013, certain evidences found that they are engaged in providing accommodation entries of bogus unsecured loans and advances to various

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beneficiaries and the assessee is one of the beneficiary. The AO has reason to believe that the income has escaped assessment and issued notice u/s 148 of the Act. Whereas the assessee has filed the return of income on 05.11.2019 disclosing a total income of Rs.13,740/- and subsequently notice u/s 142(1) of the Act was issued calling for various details. In compliance the Ld. AR of the assessee appeared from time to time and also filed the details of unsecured loan of Rs 20 lakhs obtained from M/S Parvati Exports. Further, the AO has issued notice u/s 133(6) of the Act to the unsecured loan creditor which was responded by the loan creditor by letter dated 09.12.2019 along with the copy of bank statement, ledger account, balance sheet and profit and loss account and acknowledgement of return of income for the A.Y 2014-15. The assessee has filed the explanations on 06.11.2019 & 26.11.2019 submitting that the unsecured loan from M/s Parvati Exports was obtained on 12.07.2013 and was repaid along with the interest in the same financial year. F.Y.2013-14 on the following dates 10.03.2014 and 26.03.2014. The Loan was obtained and repaid

through banking channel and also TDS has been deducted on interest payments. Whereas the AO was not satisfied with the explanations and has relied on the statement of Bhanwarlal Jain Group and made an addition of Rs. 20 lakhs as unexplained cash credit u/s 68 of the Act and assessed the total income of Rs.20,13,740/- and passed the order u/s 143(3) r.w.s 147 of the Act dated 15.12.2019.

3. Aggrieved by the order the assessee has filed an appeal before the CIT(A), whereas the CIT(A) has considered the grounds of appeal, statement of facts and findings of the AO and has issued notices of hearing and since there was no compliance by the assessee to notices. Therefore the CIT(A) 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, the Ld. AR submitted that there was no compliance by the assessee before the CIT(A) and therefore the CIT(A) has sustained the action of the AO. The Ld. AR submitted that the authorized representative/ CA who has to appear in

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the appellate proceedings was taking health care of wife during pregnancy at the same time and was mentally disturbed and has filed an affidavit placed at page 34 to 35 of the paper book and therefore prayed that there is no wanton act on the part of the assessee on non compliance. Further the Ld. AR submitted that the assessee has obtained unsecured loan from M/s Parvathi Exports referred at page 4 of the paper book and whereas the loan was obtained during the F.Y 2013-14 and was repaid in the same financial year. Ld.AR submitted that the assessee has paid interest to loan creditor and substantiated with bank statement and Form.no16A and the loan is genuine and satisfy the ingredients of identity, genuineness and creditworthiness and substantiated the submissions with the factual paper book and judicial decisions and prayed for allowing the appeal. Contra, the Ld. DR supported the order of the AO and the AO has relied on the DGIT(Inv) report and has called for the various information and the assessee has not filed the details before the lower authorities.

5. Heard the rival 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 Page2 Para4 in 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 the reasons for non appearance was explained above, 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

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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 for statistical purposes.

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

Order pronounced in the open court on 29.12.2022.

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 29.12.2022

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

आदेशानुसार / BY ORDER,

सत्यापित प्रति //True Copy//

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(Asst. Registrar)
ITAT, Mumbai