

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

ITA No. 2771/Mum/2022  
(A.Y: 2008-09)

Neel Enterprises 209, 2 <sup>nd</sup> Floor, Konark Sharam, 156, Tardeo Mumbai – 400034	Vs.	ITO, Ward – 19(3)(4) 2 <sup>nd</sup> Floor, Matru Mandir, Tardeo Road Mumbai.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAGFN2816B		
Appellant	..	Respondent

Assessee by :	Mr.Raj Kumar Singh.AR
Revenue by :	Ms.Richa Gulati.DR

Date of Hearing	22.12.2022
Date of Pronouncement	22.12.2022

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) and 250 of the Act. The assessee has raised the following grounds of appeal:

- 1. That on facts and circumstances of the case and in law Notice issued U/s,148 to reopen the assessment which was earlier completed u/s.143(3) that too recording wrong reasons is without jurisdiction and void ab initio notice therefore both the impugned notice u/s.148 and consequential assessment order passed u/s.143(3) r.w.s.*

*147 being invalid and without jurisdiction may be quashed.*

*2. That without prejudice to appeal ground no.1 both the lower Income tax Authorities have erred in making and confirming the disallowance of interest paid to partner, Jitendra K. Shah at Rs.6,23,304/- wrongly and falsely stating that the said interest was not declared and offered to tax by the said partner in ITR filed by him, though the relevant documents furnished on assessment record evidences and substantiate beyond any doubt that the said interest income was duly disclosed & declared in ITR filed by the said partner who is also assessed in the same Range. In view of the same alleged disallowance made giving absolute false and patently incorrect reasons may be set aside and deleted.*

*That both the appeal grounds are independent grounds and without prejudice to each other.*

*That appellant craves the leave to amend, alter, substitute and or to raise new or additional grounds of appeal at the time of hearing.*

2. The brief facts of the case are that the assessee is a partnership firm engaged in the business as builder and developers. The assessment was originally completed u/s 143(3) of the Act on 12.11.2010 assessing a total income of Rs.2,69,910/-. The AO subsequently on perusal of the records and profit and loss account found that the assessee has disclosed interest paid of Rs.53,64,409/- and as per the statement furnished by the assessee the interest paid

is only Rs. 47,41,135/- and there is excess claim of interest of Rs.6,23,304/- paid to Shri Jitendra Shah who was one of the partners of the firm. Since the interest amount which was shown as be paid was not reflected in the profit and loss account, therefore the AO has reason to believe that the income has escaped the assessment and therefore the interest of Rs.6,23,304/- has to be treated as ineligible expenses and issued notice u/s 148 of the Act. In compliance to the notice, the assessee has filed a letter dated 10.12.2022 to treat the return of income filed on 15.04.2008 as in response to notice u/s 148 of the Act. Subsequently the AO has issued notice u/s 143(2) and 142(1) of the Act. In the course of assessment proceedings, the assessee has filed explanations referred at Para 4 along with the documentary evidence and was dealt by the AO. Finally the AO was not satisfied with the reasoning and explanations of the assessee and observed that the interest amount paid to Shri Jitendra Shah was not reflecting in the capital account nor offered for taxation and therefore made an addition of Rs.6,23,304/- and assessed the total income of Rs.

8,93,210/- and passed the order u/s 143(3) r.w.s 147 of the Act dated 21.04.2014.

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 the CIT(A) has erred in confirming the action of the Assessing officer. The assessee has a good case on merits and shall substantiate with the material evidence and prayed for an opportunity to explain before the lower authorities. Contra, the Ld. DR supported the order of the CIT(A).

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. The Ld.CIT(A) has issued the notices of hearing referred at Page 2 Para 3 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. Whereas the assessee has raised grounds of appeal challenging the additions in the assessing officer order u/sec143(3) r.w.s 147 of the Act and there could be various reasons for non appearance which cannot be overruled. Therefore, considering the principles of natural justice shall provide one more opportunity of hearing to the assessee to substantiate the case before the Assessing Officer along with evidences and information. Accordingly, set aside the order of the CIT(A) and remit the entire disputed

issues to the file of the Assessing Officer to adjudicate afresh on merits and the assessee should be provided adequate opportunity of hearing and shall cooperate in submitting the information and allow the grounds of appeal of the assessee for statistical purposes.

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

Order pronounced in the open court on 22.12.2022.

Sd/-

(PAVAN KUMAR GADALE)  
**JUDICIAL MEMBER**

Mumbai, Dated 22.12.2022

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//

1.

( Asst. Registrar)  
ITAT, Mumbai