

**IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, MUMBAI**

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER &
MS. KAVITHA RAJAGOPAL, JUDICIAL MEMBER**

**ITA No. 925/Mum/2022
(A.Y.2011-12)**

M/s Realtime Properties Ltd., 11/12, Raghuvanshi Mill Compound, Senapti Bapat Marg, Lower Parel (West), Mumbai 400 013	Vs.	DCIT, Central Circle-5(3) R. No. 1906, 19 th Floor, Air India Building, Nariman Point, Mumbai - 400021
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AADCR3612D		
Appellant	..	Respondent

Appellant by :	None
Respondent by :	Anil Sant

Date of Hearing	14.12.2022
Date of Pronouncement	23.12.2022

आदेश / O R D E R

Per Amarjit Singh (AM):

The present appeal filed by the assessee is directed against the order passed by the Id. CIT(A)-53, dated 26.11.2019 for A.Y. 2011-12. The assessee has raised the following grounds before us:

- “1. All of the below mentioned grounds of appeal are without prejudice and are mutually exclusive to each other.

2. *That the learned AO and the learned Commissioner of Income Tax (Appeals) ("CIT(A)") have grossly erred on facts and in law in passing the orders without giving a sufficient and reasonable opportunity to the assessee to be heard.*
3. *That, on the facts and circumstances of the case, the CIT(A) has erred in law and on facts in upholding the assessment order u/s 144 r.w.s. 147 of the Act and the additions/disallowances made therein.*
4. *That on the facts and circumstances in the appellants case and in law the order passed by learned Assessing Officer dated 18.12.2018 and further order passed by the learned CIT (A) dated 26.11.2019 are bad in law as re-opening proceeding u/s.147 by issue of notice dated 27.03.2018 u/s 148 were based on invalid reasons to believe for reopening the assessment proceeding.*
5. *That on the facts and circumstances of the case and in law order of the learned AO and order of the learned CIT(A) upholding the same are bad in law as sanction as required under section 151 of the Act has not been obtained from the Commissioner of Income Tax before issue of notice under section 148 of the Act or having been obtained the copy of the same has not been provided to the Appellant, which is against the principles of natural justice.*
6. *That the notice u/s 143(2) was not served within the prescribed period, hence the assessment order passed and the additions made therein are illegal, bad in law and without jurisdiction."*

2. Fact in brief is that return of income was filed on 26.09.2011 and same was processed u/s 143(1) of the Act and total income was determined at Rs.28,38,723/- under the provision of MAT u/s 115JB of the Act. Subsequently, on the basis of information received from DGIT, Central Circle, Mumbai, the Assessing Officer observed that M/s Raves Traders Ltd. had provided accommodation entries to the various companies including the assessee company. On the basis of information received and after being satisfied with regard to the information available the A.O has reopened u/s 148 of the Act. The assessee had not made any compliance to the notice u/s 148 and notice 142(1) of the Act issued by the A.O. Therefore, the A.O has completed the assessment exparte u/s

144 of the Act by making addition of Rs.1,77,01,348/- pertaining to the transaction with M/s Raves Trades Pvt. Ltd.

3. The assessee has filed the appeal before the ld. CIT(A). The ld. CIT(A) has dismissed ground of appeal against the reopening of assessment u/s 147 of the Act holding that assessee had failed to avail the opportunity to represent the case before the Assessing Officer despite affording several opportunities and held that reason were recorded and notice u/s 148 was issued after taking approval of the prescribed authorities. Regarding addition of Rs.1,77,01,348/- the ld. CIT(A) has dismissed the appeal of the assessee stating that assessee has failed to substantiate the genuineness of the transaction undertaken with M/s Raves Trade Pvt. Ltd.

4. Heard the ld. D.R. and perused the material on record along with paper book filed by the assessee. Without reiterating the facts as elaborated above during the course of assessment proceedings neither the assessee has attended nor filed any submission before the Assessing Officer. During the course of appellate proceedings before the ld. CIT(A) the assessee has filed application for adjournment which was not granted thereafter assessee filed written submission before the ld. CIT(A) on 25.09.2019. It was submitted that assessee was subsidiary company of Jay Bharat Textiles & Real Estate Ltd. The amount received from Raves Trader Pvt. Ltd. amounting to Rs. 1,77,01,348/- had been transferred to Jay Bharat Textiles & Real Estate Ltd. and Jay Bharat & Textiles Real Estate Ltd. had accounted sales in their books of account. It was submitted before the ld. CIT(A) that the same amount was already offered for tax by the assessee's holding company Jay Bharat Textiles and Real Estate Ltd. However, the A.O had made double addition by

again adding the same amount in the case of the assessee. In this regard, the Id. CIT(A) has rejected the submission of the assessee stating that assessee had not shown that it had furnished any such plea before the Assessing Officer and further stated that the assessee has also not furnished any detail of sales and sale register of Jay Bharat Textiles & Real Estate Ltd. The Id. CIT(A) has rejected this claim of the assessee on the ground that it cannot be verified for want of relevant details. In this regard, we have noticed from the material on record that neither the Id. CIT(A) has called any remand report from the Assessing Officer nor referred any show cause notice issued to the assessee for furnishing the required detail to adjudicate the claim of the assessee that there was double addition made in respect of the sale amount as discussed above in this order. Further, we have noticed that regarding the claim of the assessee for setting off disallowance u/s 69A of Rs.1,77,01,348/- the Id. CIT(A) has rejected the claim on the ground that no submission has been filed in this regard. However, we find that the Id. CIT(A) has not referred any show cause notice by which the assessee was asked to furnish the relevant detail in respect of its claim of deduction u/s 115BB of the Act. Looking to the above facts and circumstances in order to adjudicate this case on merit we consider it appropriate to restore the case to the Id. CIT(A) for deciding denovo after calling the relevant detail from the assessee or the remand report from the assessing officer and after giving another opportunity to the assessee. The assessee is also directed to make due compliance before the Id. CIT(A). Therefore, ground of appeal of the assessee are allowed for statistical purposes.

5. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 23.12.2022

Sd/-

Sd/-

(Kavitha Rajagopal)
Judicial Member

(Amarjit Singh)
Accountant Member

Place: Mumbai

Date 23.12.2022

Rohit: PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench, Mumbai.