

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'एसएमसी', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH KOLKATA

श्री संजय शर्मा, न्यायिक सदस्य एवं श्री मनीष बोरड, लेखा सदस्य के समक्ष

**Before Dr. Manish Borad, Accountant Member
and Shri Sonjoy Sarma, Judicial Member**

I.T.A. Nos.722&723/Kol/2022
Assessment Years: 2011-12 & 2012-13

Alosha Vanijya Pvt. Ltd.....Appellant
40/15, Moore Avenue, Regent Park,
Kolkata-700040.
[PAN: AACCA5623N]

vs.

ITO, Ward-11(2), Kolkata.....Respondent

Appearances by:

Shri Amit Agarwal, Advocate, appeared on behalf of the appellant.

Shri Ranu Biswas, Addl. CIT-DR, appeared on behalf of the Respondent.

Date of concluding the hearing : February 27, 2023

Date of pronouncing the order : March 15, 2023

ORDER

Per Manish Borad, Accountant Member:

Both these appeals filed by the same assessee pertaining to the Assessment Years 2011-12 & 2012-13 are directed against the order of the National Faceless Appeal Centre [in short ld. "CIT(A)"] both dated 14.10.2022 arising out of the order u/s 144/147 of the Income Tax Act 1961 (hereinafter referred to as the 'Act') dated 04.12.2019.

2. Registry has informed that there is delay of one day in both the appeals. We have gone through the condonation application and are satisfied that the assessee had a reasonable cause for the said delay. We, therefore, condone the delay and admit the appeal for adjudication on merits.

3. At the outset, the ld. Counsel for the assessee submitted that ITA No.722/Kol/2022 has been filed against the order of the ld. CIT(A)

dated 14.10.2022, wherein, the ld. CIT(A) inadvertently mentioned wrong assessment year i.e. A.Y 2011-12, whereas, the order of the Assessing Officer is for assessment year 2012-13. Therefore, prayer was made that the impugned order for assessment year 2011-12 dated 14.10.2022 may be held as infructuous.

4. So far as, ITA No.723/Kol/2022 is concerned, the prayer of the assessee was that since the order of the ld. CIT(A) is an ex parte therefore the issue of addition made u/s 68 at Rs.10,00,000/- may be restored for a fresh adjudication to the file of the Assessing Officer.

5. The ld. Departmental Representative failed to controvert the submissions made by the ld. Counsel for the assessee.

6. We have heard rival contentions and perused the records. We notice that the assessee is a private limited company engaged in non-banking financial corporation and declared nil income for assessment year 2012-13 for e-return filed on 30.09.2012. The reassessment proceedings carried out after serving notice u/s 148, 143(2) & 142(1) of the act but since the assessee did not file any document, nor replied to any show-cause notice dated 20.11.2019 as stated in the assessment order, the proceedings were concluded after making an addition u/s 68 of the Act for unexplained cash credit at Rs.10,00,000/- received from Sri Suraj Verma. The said addition was challenged by the assessee before the ld. CIT(A).

While perusing the records of ITA No.722/Kol/2022, we notice that the impugned order of the ld. CIT(A) (NFAC) is dated 14.10.2022 and assessment year mentioned is A.Y 2011-12 and the impugned order bears DIN & Order No.ITBA/NFAC/S/250/2022-23/1046300287(1). *Prima facie*, we notice that the ld. CIT(A) inadvertently mentioned the

wrong assessment year for which there is no appeal filed by the assessee, therefore, this impugned order is non-est and nullity, liable to be quashed and therefore, appeal of the assessee ITA No.722/Kol/2022 is allowed.

6.1 Now, so far as ITA No.723/Kol/2022 is concerned, in the impugned order, ld. CIT(A) has correctly mentioned the assessment year 2012-13 and impugned order is bearing DIN and Order No. ITBA/NFAC/S/250/2022-23/1046300089(1) and is dated 14.10.2022. However, on perusal of the impugned order, we find it is an *ex parte* order and since the assessee did not comply before the Assessing Officer and nor complied to any of the notices, the appeal was dismissed, the assessment order dated 04.12.2019 is framed as best judgment u/s 144 r.w.s 147 of the Act. The ld. Assessing Officer has observed that the assessee neither submitted any document nor filed any reply to the show-cause notice dated 20.11.2019. On the other hand, the ld. Counsel for the assessee referring to the paper-book, submitted that reply was given on 03.08.2019 to the notice issued u/s 148 of the Act. Again a reply dated 25.11.2019 raising objections, against the reasons to belief, were also filed. Considering the factual matrix and the assessee being unable to plead before both the lower authorities, we are inclined to restore the issues raised in the instant appeal in ITA No.723/Kol/2022 to the file of the Assessing Officer and provide one opportunity to the assessee for furnishing relevant documents in order to explain the source of Rs.10,00,000/- received during the year from Sri Suraj Verma. Needless to mention that proper opportunity of being heard should be provided to the assessee.

7. In the result, the appeal of the assessee in ITA No.722/Kol/2022 is allowed and ITA No.723/Kol/2022 is allowed for statistical purposes.

Kolkata, the 15th March, 2023.

Sd/-
[Sonjoy Sarma]
Judicial Member

Sd/-
[Manish Borad]
Accountant Member

Dated: 15.03.2023.

RS

Copy of the order forwarded to:

1. Alosha Vanijya Pvt. Ltd
2. ITO, Ward-11(2), Kolkata
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches