

IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER AND
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.277/Mum./2023
(Assessment Year : 2011-12)

M/s. Trine Entertainment Limited
110 Linkway Estate, New Link Road
Malad (West), Mumbai 400 064
PAN – AACCT4311Q

..... Appellant

v/s

Income Tax Officer
Ward-8(3)(3), Mumbai

.....Respondent

Assessee by : Ms. Bhavya Bansal
Revenue by : Shri Satyaprakash Singh

Date of Hearing – 11/04/2023

Date of Order – 12/04/2023

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 28/07/2022, passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*"learned CIT(A)"*], for the assessment year 2011-12.

2. In its appeal, the assessee has raised the following grounds:-

"1. On the facts and circumstances of the case, the order passed by the Ld. CIT (A), NFAC- New Delhi is bad in law and against the principles of natural justice.

2. That the Ld. CIT(A), NFAC - New Delhi has grossly erred both in facts and circumstances of the case and in law by confirming the disallowance of deduction of Rs. 53,17,433/- claimed u/s 10A of the Income Tax Act, 1961 on the following grounds:

(a) That Audit report in Form 56F was not considered by the Ld. CIT(A) even though the same was filed during the course of the proceedings.

(b) That brought forward losses must be set off before claiming deduction u/s 10A, when there are case laws stating otherwise.

(c) That export remittances amounting to Rs. 1,10,59,254/- were not received till date when the same has been duly received.

3. That the Ld. AO has grossly erred both in facts and circumstances of the case and in law by disallowing expenses of Rs. 5,84,698/- towards increase in share capital u/s 37(1) of the Income Tax Act, 1961.

4. That the Ld. AO has grossly erred both in facts and circumstances of the case and in law by disallowing deduction of Rs. 53,90,600/- u/s 40(a)(ia) of the Income Tax Act, 1961.

5. That the Ld. CIT(A), NFAC - New Delhi has grossly erred both in facts and circumstances of the case and in law by not considering the submissions made during the manual appeal and issued an ex-parte order.

6. That the appellant craves leave to add, alter, amend or withdraw all or any grounds herein or add any further grounds as may be considered necessary either before or during the hearing of these grounds.

The above grounds of appeals are independent of, and without prejudice to each other."

3. The brief facts of the case are: The assessee is carrying out business activity of developing online and offline software games at its 100% export-oriented STPI unit. During the year under consideration, the assessee has shown income under the head "Business" from this activity and has claimed deduction under section 10A of the Act. For the year under consideration, the assessee filed its return of income on 30/09/2011 by declaring a total income of Rs.19,78,444 under section 115JB of the Act. The return of income filed by the assessee was selected for scrutiny and statutory notices under section 143(2) and section 142(1) along with questionnaire were issued and served of

the assessee. During the assessment proceedings, the assessee was asked to furnish the mandatory audit form in Form No. 56F in respect of the deduction claimed under section 10A of the Act. Since the said form was not submitted by the assessee, the Assessing Officer ("AO") vide order dated 31/12/2013 passed under section 143(3) of the Act denied the claim of exemption under section 10A of the Act. The AO found that the assessee has claimed deduction under section 10A of the Act before setting off the available brought forward unabsorbed depreciation in the computation of income, which as per the AO is not tenable. The AO also found that out of total export sales of Rs.4,86,98,425 considered for computing the deduction under section 10A, an amount of Rs.1,10,59,254 was not received yet. Further, the AO noted that the assessee has made suo moto disallowance of Rs.41,96,199 under section 40(a)(ia), however, as per the tax audit report in Form 3CD an amount of Rs.90,20,401 was stated as inadmissible under section 40(a) of the Act. Despite the query being raised by the AO, the assessee filed no explanation regarding the same. Accordingly, the AO vide assessment order made further disallowance of Rs.48,24,202 under section 40(a)(ia) of the Act, over and above the suo moto disallowance made by the assessee. Since in respect of audit fees, professional fees, consultancy charges, and software development charges paid by the assessee no TDS was deducted, therefore, the AO made disallowance of Rs.5,66,398 under section 40(a)(ia) of the Act. The AO also disallowed expenditure to the tune of Rs. 5,84,698 towards the increase in share capital.

4. In the appeal before the learned CIT(A), despite various notices being issued, no reply/submission was filed on behalf of the assessee. Accordingly,

vide impugned ex-parte order dated 28/07/2022, the learned CIT(A) dismissed the appeal filed by the assessee. Being aggrieved, the assessee is in appeal before us.

5. We have considered the rival submissions and perused the material available on record. It is evident that the learned CIT(A) has passed the order ex-parte due to the non-appearance of/on behalf of the assessee. The learned Authorised Representative ("*learned AR*"), before us, could not provide any justifiable reasons for non-appearance of the assessee before the learned CIT(A). Further, now in appeal before us, the assessee is duly represented by the learned AR and wishes to pursue the litigation against the additions made by the AO. As per the learned AR, the assessee had filed its submissions before the learned CIT(A), before the transition of its appeal to the National Faceless Appeal Centre. The learned AR also submitted that the AO had also filed its remand report during the physical hearing of the appeal before the learned CIT(A). However, we find that none of these documents were considered by the learned CIT(A) while dismissing the assessee's appeal vide impugned order. Since the learned CIT(A) has not rendered any finding on the merits of the issues involved in the present appeal, therefore, we consider it appropriate to restore the appeal to the file of the learned CIT(A) for *de novo* adjudication of the appeal on merits after consideration of all the details/submissions as filed by the assessee. Needless to mention that no order shall be passed without affording reasonable opportunity of hearing to the parties. Further, the assessee is directed to appear before the learned CIT(A) on all the dates of hearing as may be fixed without any default.

Accordingly, grounds raised by the assessee are allowed for statistical purposes.

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

Order pronounced in the open Court on 12/04/2023

Sd/-
PRASHANT MAHARISHI
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 12/04/2023

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai