

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

**BEFORE SHRI ABY T VARKEY, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA Nos. 3187 & 2740/Mum/2022
(A.Y.2011-12)**

Shyam Narayan Trades Private Limited Shop No.3, Building No. 136, Kalbadevi Road, Vithalwadi, Kalbadevi, Mumbai – 400002	Vs.	Income Tax Officer-4(3)(1) Room No. 637, 6 th Floor, Aaykar Bhavan, M.K.Road, Mumbai - 400020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAKCS2903B		
Appellant	..	Respondent

Appellant by :	Bhargavi Raval
Respondent by :	Bharat Andhale

Date of Hearing	15.03.2023
Date of Pronouncement	27.03.2023

अदेश / O R D E R

Per Amarjit Singh (AM):

Both these appeals are filed by the assessee against the different orders of NAFC, Delhi. On the basis of assessment made by the assessing officer u/s 143(3) and 144 r.w.s 147 of the Act.

ITA No.3187/Mum/2022

“1.01 The Learned CIT(A) has failed to appreciate the fact that the Appellant has asked for an adjournment as the documents was to be gathered from multiple sources and required some time to compile the said documents before submission to the learned CIT(A) The learned CIT(A) dismissed the appeal of the Appellant Company without considering the details available on record with CIT(A) and the department and without giving any opportunity for video conference to the Appellant Company.

1.02 The learned CIT(A) ought to have accepted the request of the Appellant Company and should have granted the necessary adjournment for submission

of the necessary papers/ information in order to give a speaking order in the matters under appeal.

2.01 The Learned CIT(A) failed to appreciate the fact that the Order u/s 250 of the Act ought not to be passed as the appeal for AY 2010-2011 for assessment order Passed u/s 143(3) read with section 147 and appeal for the AY 2008-2009 for the Assessment Order passed u/s 143(3) read with section 147 are pending before CIT(A) for adjudication on similar grounds.

3.01 The Learned CIT(A) has erred in disallowing interest expense of Rs. 20,603/- as pertaining to capital not borrowed as envisaged u/s 24(b) of the income-tax Act.

4.01 The Learned CIT(A) has erred in disallowing the interest expense of Rs. 19,01,074/- by not considering the fact that the property can be owned and enjoyed only by virtue of owning the shares and debentures as envisaged in the agreement as well as memorandum of association / article of association. The Learned CIT(A) erred in not considering the fact that cost of shares and debentures was part and parcel of the entire cost of property.

5.01 The Learned CIT(A) has erred in making addition of Rs 23,629/- based on AIR Data without considering the fact that the tenant had deducted TDS on reimbursement of Expenses which is not a part of taxable income under Income from House Property.

6.01 The Learned CIT(A) failed to appreciate the fact that there was an error in computing total income of the Appellant while preparing Income Tax Computing Form and in the Income tax Computation Form, Income from non-speculative business amounting to Rs. 15,48 472/ has been shown which is not there either in the Computation submitted by the Company nor in the assessment order passed by the Assessing Officer resulting in higher demand of tax from the Appellant Company.

7.01 The Appellant craves to consider each of the above Grounds of Appeal without prejudice to each other and craves leave to add, alter, delete, amend and / or modify all or any of the above grounds of Appeal at the time or before the date of hearing.”

2. The fact in brief is that return of income declaring nil income was filed on 24.09.2011. The case was selected for scrutiny assessment and notice u/s 143(2) of the Act was issued on 13.09.2012. The A.O has determined the total income at Rs.8,00,857/- after making disallowance of interest expenses of Rs.20,603/- u/s 24(b) and interest expenses of Rs.9,01,074/- u/s 24(b), addition of Rs.23,629/- based on AIR data and income from non-speculative business amounting to Rs.15,48,472/-.

3. Aggrieved, the ld. CIT(A) has dismissed the appeal of the assessee for want of non-compliance.

4. During the course of appellate proceeding before us the ld. Counsel contended that because of two appeals pending before ld. CIT(A) for the same assessment year u/s 143(3) and u/s 147 of the Act the necessary compliance could not be made, therefore requested that more opportunity should be given to the assessee for adjudicating the case on merit.

On the other hand, the ld. D.R supported the order of lower authorities.

5. Heard both the sides and perused the material on record. It is noticed that ld. CIT(A) has dismissed the appeal filed by the assessee on the ground that no compliance was made by the assessee during the course of appellate proceedings. In this regard, we observe that ld. CIT(A) ought to have consider the material on record for adjudicating the issue contested in the appeal on merit. Section 250(6) contemplate that ld. CIT(A) would determine point in dispute and therefore, record reason on such point in support of his conclusion. Therefore, we restore this case to the file of the ld. CIT(A) for adjudicating on merit after affording opportunity to the assessee. The assessee is also directed to make necessary compliance before the ld. CIT(A) without any failure.

ITA No.2740/Mum/2022

6. This appeal of the assessee was also dismissed in the similar manner because of non-compliance made by the assessee as discussed supra while adjudicating the appeal vide ITA No. 3187/Mum/2022, therefore, applying the finding of the same mutatis mutandis this matter is also restored to the file of the ld. CIT(A) for adjudicating on merit after affording opportunity to the assessee. Therefore, the appeal of the assessee is allowed for statistical purpose.

7. In the result, both the appeals are allowed for statistical purposes.

Order pronounced in the open court on 27.03.2023

Sd/-

Sd/-

(Aby T Varkey)
Judicial Member

(Amarjit Singh)
Accountant Member

Place: Mumbai

Date 27.03.2023

Rohit: PS

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

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

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

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