

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH: BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.288/Bang/2023
Assessment Year: 2017-18

M/s. Satchmo Holdings Limited No.110, Level-1, M.G. Road Andrews Building M.G. Road Bangalore 560 001 Karnataka PAN NO : AABCN9267C	Vs.	Deputy Commissioner of Income-tax Circle-5(1)(1) Bangalore
APPELLANT		RESPONDENT

Appellant by	:	Smt. Sunaina Bhatia, A.R.
Respondent by	:	Shri D.K. Mishra, D.R.

Date of Hearing	:	31.05.2023
Date of Pronouncement	:	31.05.2023

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal by assessee is directed against order of NFAC Delhi for the assessment year 2017-18 dated 20.2.2023.

2. Facts of the case are that the assessee, a limited company, carries on the business of development, sale, management and operation of residential building, retail and hotel projects, commercial premises and other related activities. For the year under appeal, the assessee company has originally filed its return of income on 30/10/2017, reporting

a total Loss of Rs. 44,40,07,230/- and thereafter, the assessee had filed its revised return of loss on 24/10/2018, reporting a total loss of Rs. 39,04,33,911/-. The case of the assessee was selected for "Complete Scrutiny" under CASS and statutory notice u/s.143[2] of the Act dated 09/08/2018 was issued to the assessee. In response to the aforesaid notice, the assessee had filed the acknowledgement for having filed the return of income along with the computation of total income, financials and audit report u/s 3CA and 3CB of the Act through e-filing portal. In course of the assessment proceedings, the learned A.O. had issued a notice u/s 142[1] rws 129 of the Act dated 07/08/2019 along with the questionnaire calling for certain details. In response to the aforesaid notice, the assessee had filed all the details called for by the learned A.O. Thereafter, the ld. AO proceeded to pass an assessment order u/s 143(3) of the Act. In the impugned order passed u/s 143(3) of the Act dated 31.12.2019 in which he has made the following additions and disallowances to the income returned:-

- a) Disallowance of Finance cost Rs.3,29,54,516/-
- b) Disallowance u/s 14A of the Act Rs.4,82,79,979/-

2.1 Aggrieved, the assessee went in appeal before NFAC. The NFAC has given notices of hearing to the assessee as follows:

S.No.	Date of issue	Date of compliance	Remarks
1	07.01.2021	22.01.2021	No response or submission received
2	19.04.2021	26.04.2021	No response or submission received
3	06.01.2023	12.01.2023	No response or submission received
4	19.01.2023	30.01.2023	No response or submission received
5	09.02.2023	17.02.2023	No response or submission received

In view of this non-compliance from the assessee's side, the NFAC confirmed the order of AO. Against this assessee is in appeal before us by way of following grounds:

1. *"The orders of the authorities below in so far as they are against the appellant are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.*
2. *The learned CIT(A) is not justified in disposing off the appeal filed without giving sufficient and effective opportunity to the appellant especially when the appellant had sought time for filing written submission on the e-filing portal till 4.3.2023 and therefore, the order passed by the learned CIT(A) on 20.2.2023 deserves to be vacated.*
3. *The learned CIT(A) is not justified in upholding the disallowance of Finance cost of Rs.3,29,54,516/- under the facts and in the circumstances of the appellant's case.*
4. *The learned CIT(A) is not justified in upholding the disallowance u/s 14A of the Act of Rs.4,82,79,979/- by invoking the provisions of Rule 8D of the I.T. Rules under the facts and in the circumstances of the appellant's case.*
5. *The learned CIT(A) failed to appreciate that the provisions of Rule 8D of the I.T. Rules were wholly inapplicable in as much as the learned AO has not recorded any dissatisfaction about the claim of the appellant in terms of section 14A(2) of the Act and hence, the disallowance made is opposed to law and facts of the appellant's case.*
6. *Without prejudice to the above, the learned CIT(A) ought not to have adopted the sum of Rs.4,82,79,979/- as the average monthly balance of the investments yielding exempt income for computing the disallowance u/s 14A read with Rule 8D of the Act as against the correct figure of Rs.5,87,48,257/-, under the facts and in the circumstances of the appellant's case.*
7. *Without prejudice to the above, the disallowance made u/s 14A of the Act of Rs.4,82,79,979/- is highly excessive considering the exempt income of Rs.66,000/- earned by the appellant and hence, the disallowance made in excess of the exempt income earned deserves to be deleted."*

3. Before us, the ld. A.R. submitted that the assessee sought time for filing written submissions up to 4.3.2023. However, NFAC has passed order on 20.2.2023 itself, which shall be vacated and the issue may be remitted to the file of NFAC for giving an opportunity of hearing to the assessee in the interest of justice.

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4. The Id. D.R. submitted that assessee has not make use of opportunities given to it before this NFAC. Hence, appeal be decided on merit only.

5. We have heard the rival submissions and perused the materials available on record. In this case, admittedly, assessee has not participated before NFAC by filing requisite information and the NFAC decide the issue ex-parte. In our opinion, in the interest of justice, it is appropriate to remit the entire issue in dispute to the file of NFAC to decide the issue afresh after giving an opportunity of hearing to the assessee.

6. In the result, the assessee's appeal is partly allowed for statistical purposes.

Order pronounced in the open court on 31st May, 2023

Sd/-
(Beena Pillai)
Judicial Member

Sd/-
(Chandra Poojari)
Accountant Member

Bangalore,
Dated 31st May, 2023.

VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(Judicial)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar,
ITAT, Bangalore