

**IN THE INCOME TAX APPELLATE TRIBUNAL, KOLKATA BENCH 'SMC', KOLKATA**

**BEFORE SHRI SONJOY SARMA, HON'BLE JUDICIAL MEMBER  
AND SHRI GIRISH AGRAWAL, HON'BLE ACCOUNTANT MEMBER**

**ITA No.123/Kol/2023  
Assessment Year: 2014-15**

Bhutoria Electricals Pvt. Ltd. Room No. 310, 41A, Diamond Prestige, A.J.C. Bose Road, Kolkata-700017. <b>PAN: AABCB 1494 M</b> (Appellant)	vs	ACIT, NFAC, Delhi / ITO, Ward-7(1), Kolkata (Respondent)
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**Present for:**

Appellant by : Shri Miraj D. Shah, AR  
Respondent by : Smt. Ranu Biswas, Addl. CIT, Sr. DR

Date of Hearing : 30.03.2023  
Date of Pronouncement : 12.06.2023

**ORDER**

**PER SONJOY SARMA, JM:**

This appeal in ITA No. 123/Kol/2023 for A.Y. 2014-15 is preferred by the assessee against the order of the Commissioner of Income Tax, National Faceless Appeal Centre, Delhi (NFAC) [Ld. CIT in short], dated 17.01.2023. The assessee has raised the following grounds of appeal:

- “1. For that the learned CIT (Appeals) erred in dismissing the appeal on merits without giving proper opportunity of hearing to the assessee. Thus, order of the CIT (Appeals) be reversed.*
- 2. For that the order passed by the learned CIT (Appeals) is bad in law and therefore the same be reversed.*
- 3. For that in the facts and circumstance the Learned Commissioner of Income Tax Appeals erred in upholding the addition of Rs.10,00,000 on account of share application money received M/s Ramkrishna Vyapar Pvt. Ltd. as unexplained cash credit u/s 68 of the Income Tax Act, 1961. The addition is not called for and hence the same be deleted.*
- 4. For that the facts and circumstances of the case the notice u/s 148 of the Income Tax Act 1961 was without jurisdiction and bad in law and hence the entire assessment order is bad in law and the same should be quashed.*

5. For that the reopening of assessment u/s 148 of the Income Tax Act 1961 was bad in law and hence the reopening be declared to be bad in law and the reassessment order be quashed.

6. For that the reasons recorded before reopening of assessment u/s 148 of the Income Tax Act 1961 did not meet the test of law laid down by various courts and hence the reopening be declared to be bad in law and the reassessment order be quashed.

7. For that the reopening of assessment u/s 148 of the Income Tax Act 1961 was on borrowed satisfaction and not on any independent application of mind by the assessing officer and hence the reopening be declared to be bad in law and the reassessment order be quashed.

8. For that the reopening of assessment u/s 148 of the Income Tax Act 1961 was without any relevant material having link to escapement of income and hence the reopening be declared to be bad in law and the reassessment order be quashed.

9. For that the sanction u/s 151 of the Income Tax Act 1961 before the reopening of assessment u/s 148 of the IT Act 1961 was mechanical and without application of proper mind and the sanction was bad in law and hence the reopening be held to be bad in law.

10. For that the learned CIT (Appeals) relied on judgments and definition without giving any proper opportunity to the Appellant to distinguish the same and therefore the Appellate order was bad in law.

11. For that in the facts and circumstances of the case the Learned Commissioner of Income Tax Appeals erred in upholding that the material based on which the Ld Assessment Officer passed the assessment order are collected behind the back of the assessee and which were not provided during the course of assessment proceeding, material should be excluded/ignored for the purpose of this case.

12. For that in the facts and circumstances of the case the Learned Commissioner of Income Tax Appeals erred in upholding that the statement of third parties on which the Ld Assessment officer relied during the course of assessment proceeding were not subjected to cross examination for the assessee, thus the third party statement relied upon should be excluded/ignored for the purpose of this case.

13. For that in the facts and circumstances of the case the assessee was not provided with proper opportunity of hearing before the Ld CIT Appeals and hence the order passed by the Ld CIT Appeals is bad in law and hence the same be reversed.

14. For that in the facts and circumstances of the case the appellate order passed was in violation of principals of natural justice hence is bad in law and be quashed.

*15. For that the interest computed u/s 234 A/B/C of the IT Act 1961 is over charged and wrongly calculated and or is not applicable to the assessee case hence the interest be deleted and or correctly computed.*

*16. The appellant craves leave to produce additional evidences in terms of Rule 29 of the Income Tax (Appellate Tribunal) Rules, 1963.*

*17. The appellant craves leave to press new, additional grounds of appeal or modify, withdraw any of the above grounds at the time of hearing of the appeal.”*

2. The assessee has raised 17 grounds however at the time of hearing, ld. counsel submitted that effective grounds of appeal are 1 to 5 and the remaining grounds are not pressed.

3. Brief facts of the case are that the assessee is a company and filed its return of income for the assessment year in question on 27.09.2014 by disclosing gross total income of Rs. 43,941/-. Subsequently, the notice u/s 148 has been issued upon the assessee vide letter dated 20.03.2020 and in response to such notice, assessee had filed its return of income on 12.08.2020. Immediately after it, notices u/s 142(1) and 143(2) were also issued upon the assessee. In response to such notices, assessee filed copies of registration, copies of bank statement, copies of director's report along with balance sheet and profit and loss account before the AO. As per the assessment order numerous opportunities were given to the assessee to justify the transaction of Rs. 10,00,000/- from M/s. Ramkrishna Vyapar Pvt. Ltd entered on 12.09.2013 in HDFC Bank. But no further response was forthcoming from the ends of assessee and the ld. AO after perusal of the ledger of accounts of M/s. Ramkrishna Vyapar Pvt. Ltd. in the books of assessee's ledger, he noticed that there was an opening debit balance since 01.04.2009 of Rs. 10,00,000/-

narration states as share application money and which was received back during the year on 12.09.2013. Therefore, the ld. AO added an amount of Rs. 10,00,000/- as income undisclosed source in the hands of assessee.

4. Dissatisfied with the above order, assessee preferred an appeal before the ld. CIT(A) wherein the ld. CIT(A) dismissed the appeal filed by the assessee.

5. Aggrieved by the above order, assessee filed the appeal before the Tribunal raising multiple grounds of appeal. Though the assessee has raised several grounds of appeal contesting the various disallowances and addition made by the AO and sustained by the ld. CIT(A), we find that the ld. AR of the assessee at the time of hearing primarily raised ground no. 1 that the ld. CIT(A) has passed an ex-parte without granting sufficient opportunity to the assessee and on perusal of the order of ld. CIT(A), we find that fair opportunities were indeed given to the assessee for representation which was not complied by the assessee. The ld. AR before us prayed for one more opportunity given before the ld. CIT(A). We find that the order passed by the ld. CIT(A) is an ex-parte order and assessee did not get any opportunity to appear before him. In such a situation, it is a fit case for remanding the appeal before ld. CIT(A) to given more effective opportunity to the assessee. The assessee is also directed to co-operate with the expeditious disposal of the appeal before the ld. CIT(A) by not seeking any adjournment due to the exceptional and unavoidable circumstances. In view of the above discussion, the various

grounds raised by the assessee on merits should left open and remand back to the ld. CIT(A) for de novo adjudication.

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

**Order pronounced in the open court on 12.06.2023**

**Sd/-**

**Sd/-**

**(GIRISH AGRAWAL)  
ACCOUNTANT MEMBER**

**(SONJOY SARMA)  
JUDICIAL MEMBER**

Kolkata: 12.06.2023  
Biswajit, Sr. P.S.

Copy to:

1. The Appellant: Bhutoria Electricals Pvt. Ltd.
2. The Respondent: ACIT, NFAC, Delhi / ITO, Ward-7(1), Kolkata.
3. The CIT,
4. The CIT (A)
5. The DR .

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By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata