

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A" : PUNE

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

I.T.A.No.457/PUN./2023
Assessment Year 2011-12

Dongarai Construction Company, Kadepur Khanapur, Sangli, Maharashtra. PIN 415 305 PAN AABFD3012G	vs.	The ACIT, Circle-2, Sangli. Maharashtra. PIN – 415 305
(Applicant)		(Respondent)

For Assessee :	Shri B.C. Malakar
For Revenue :	Shri Ramnath P Murkude

Date of Hearing :	08.06.2023
Date of Pronouncement :	19.06.2023

ORDER

PER SATBEER SINGH GODARA, J.M. :

This assessee's appeal arises against the National Faceless Appeal Centre [in short "NFAC"] Delhi's Din and Order No. ITBA/NFAC/S/250/2022-23/1050545458(1), dated 09.03.2023, involving proceedings u/s. 147 r.w.s. 144 of the Income Tax Act, 1961 (in short "the Act").

Heard both the parties. Case file perused.

2. The assessee pleads the following substantive grounds in the instant appeal :

1. *“On the facts and in the circumstances of the case and in law, the Ld. CIT(Appeals), National Faceless Appeal Centre (NFAC) erred in dismissing the appeal of the appellant wherein the appellant had contested the very validity of reopening of the case u/s. 147 of the I.T. Act,1961 and issuing of notice u/s.148 of the said Act by the Assessing Officer holding that there was income which had escaped assessment in the case of the appellant ignoring and without appreciating the facts that the business of appellant had been closed on 31/10/2009 due to taking over of the appellant’s concern Dongarai Construction Company (PAN : AABFD 3012G) by Dongarai Infrastructure Private Limited (PAN: AAFCP1473J) and hence there was no question of having any income of the appellant during the A.Y.2011-12 which could be said as escaped assessment. The appellate order therefore so passed confirming the re-opening of assessment by the Assessing Officer as valid being arbitrary, illegal and bad in law be set aside/quashed.*
2. *On the facts and in the circumstances of the case and in law, the Ld. CIT(Appeals), National Faceless Appeal Centre (NFAC) erred in dismissing the appeal of the appellant wherein the appellant had contested the very validity of reopening of the case u/s. 147 of the I.T. Act,1961 and issuing of notice u/s.148 of the said Act and consequential*

passing of the ex-parte assessment order u/s. 144 r.w.s.147 of the Act dated 14/12/2018 by the Assessing Officer without quashing/setting aside the assessment order as appealed for ignoring and without appreciating the submission of the appellant made with documentary evidences that on closure of the business of the appellant on 31/10/2009 due to merger of the appellant's proprietary concern Dongarai Construction Company with the Company Dongarai Infrastructure Private Limited all the assets and liabilities of the appellant had been taken over by the said company w.e.f. 01/11/2019 and hence there was no income in the case of the appellant and any income attributable to the appellant pertaining for the year for appellant's business or any other source had been considered in the case of the said company and therefore as there was no income of the appellant for the year under consideration (i.e. A.Y. 2011-12) and no income in the case of the case of the appellant had escaped assessment, the ex-parte re-assessment order passed u/s.144 r.w.s.147 of the Act by the Ld. Assessing Officer should have been quashed by the Ld. CIT(A) instead of dismissing the appeal of the appellant in this regard. The appellate order therefore so passed confirming the re-opening of assessment and the re-assessment order passed by the

Assessing Officer as valid being arbitrary, illegal and bad in law be set - aside/quashed.

3. *On the facts and in the circumstances of the case and in law, the Ld. CIT(Appeals), National Faceless Appeal Centre (NFAC) erred in dismissing the appeal of the appellant wherein the appellant had contested the very validity of reopening of the case u/s. 147 of the I.T. Act, 1961 and issuing of notice u/s. 148 of the said Act and consequential passing of the ex-parte assessment order u/s. 144 r.w.s. 147 of the Act dated 14/12/2018 by the Assessing Officer ignoring and without appreciating the facts that due to merger of the appellant's proprietary concern Dongarai Construction Company with the Company Dongarai Infrastructure Private Limited from 01/11/2009 there was no income of the appellant and any income which had been attributed to the appellant due to issue of Form No. 26AS in the name of the appellant had been already considered in the computation of income and return of income filed by the company and therefore no such income for A.Y. 2011-12 could be assessed by the Assessing Officer in the case of the appellant by passing any re-assessment order u/s. 144 r.w.s. 147 of the Act, as allegedly done by the Assessing Officer. The appellate order therefore so passed confirming the re-opening of assessment and the re-assessment order passed by the*

Assessing Officer as valid being arbitrary, illegal and bad in law be set aside/quashed.

4. *On the facts and in the circumstances of the case and in law, the Ld. CIT(Appeals), National Faceless Appeal Centre (NFAC) erred in confirming the addition of Rs.64,95,415/- on the basis of computation of business income at Rs.61,99,120/- and also income from other sources of Rs.2,96,205/- in the ex-parte assessment order passed u/s.144 r.w.s. 147 of the I.T.Act,i96i dated 14/12/2018 by the Ld. Assessing Officer ignoring and without appreciating the submission and contention made/raised both before the Assessing Officer and the Ld. CIT(A) along with documentary evidences about the closure of the business of the appellant on 31/10/2009 and taking over the entire business with its assets and liabilities, income and expenditure by the Company Dongarai Infrastructure Private Limited from 01/11/2009 and therefore when there was no income of the appellant for- the year under consideration (i.e.A.Y.2011-12) the addition made by the Ld. Assessing Officer totalling to Rs.64,95,415/- in the re-assessment order passed ex-parte u/s.144 r.w.s. 147 of the Act dated 14/12/2018 should have been deleted by the Ld: CIT(A). The appellate order so passed by the Ld. CIT(A) confirming the addition of Rs.64,95,415/- made by*

the Ld. Assessing Officer being arbitrary, illegal and bad in law be deleted.

5. The appellant craves leave to add, alter, amend, withdraw or substitute any ground or grounds of appeal or to add any new ground or grounds of appeal on or before the hearing.”

3. Learned counsel submits very fairly that he does not wish to press for the foregoing legal issue of validity of reopening. Rejected accordingly.

4. Next comes the sole substantive issue on merits relating to the correctness of the impugned addition of Rs.64,95,415/-. It emerges from perusal of the case file that the assessee's stand all along is that it had closed its business way back on 31.10.2009 since taken over by M/s. Dongarai Infrastructure Private Limited with all assets and liabilities, income and expenditure and therefore, there is hardly any occasion in getting assessed for the above stated alleged business income. Learned counsel invited our attention to the assessee's detailed paper book running into 171 pages. His case in light thereof is that both the learned lower authorities have erred in law and on facts in assessing assessee for the impugned business income.

5. The Revenue has strongly supported the impugned addition in light of the CIT(A)'s detailed discussion affirming the assessment findings reading as under :

6. PROCEEDINGS:

The appellant was provided opportunities of being heard by way of issue of hearing notice dated 11th January 2021, 27th January 2023. The appellant responded on 28th January 2021, 6th February 2023, 27th February 2023, 28th February 2023, 1st March 2023, 8th March 2023. In response dated 6th February 2023, the appellant requested for video conference and the same was granted on 1st March 2023. Video conference was conducted on 6th March 2023.

Grounds of Appeal and Statement of Facts and the order of the Learned Assessing Officer have been carefully considered.

Grounds of Appeal of the Appellant as reproduced above are adjudicated as under.

7. FINDINGS & DECISION

7.1 I have gone through the submission of appellant and the assessment order. The learned AO has carried out two-fold adjustment that is estimated 8% profitability on gross receipts of Rs.7,81,51,282/- and he has taxed the interest income of Rs.2,96,204/-. The said adjustments are carried out as per amounts reflected in form 26AS of the appellant.

7.2 The appellant was a partnership firm and during FY 2009-10 the partners decided to form a private company and transfer business of such partnership firm to private ltd company.

7.3 During the year under consideration the appellant did not file return of income and it claimed that it had no business activity and the amount reflecting in form 26AS is already considered in the income tax return of newly formed private company.

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7.4 In this regard, the appellant submitted financial statements of private company along with form 26AS. However appellant did not demonstrate how the income appearing in 26AS of partnership firm is already offered to tax in the private company.

7.5 In this context the appellant ought to have produced documentary evidences such as bank statement of the partnership firm to showcase no business activity is carried out, sales register of private company depicting sale proceeds of private company and portion of partnership firms revenue, confirmation from customers, detailed computation of income of Private Company matching with TDS credit appearing for Private company and reconciling the same with 26AS of partnership firm and other relevant documentation.

7.6 The partnership firm is dissolved on 4th January 2011 and therefore it is presumed that the firm would have maintained the bank accounts for final settlements amongst partners.

7.7 In absence of relevant supporting documentary evidences, the claim of appellant cannot be maintained.

In this regard, reliance is placed on following few judicial pronouncements-

A] In CIT v. Daulat Ram Rawat Mull, the Supreme Court held that the fact that the depositor had not been able to give a satisfactory explanation regarding the source of deposit would not be decisive even of the matters as to whether the depositor was or was not the owner of the amount, that a person could still be held to be the owner of a sum of money even though the explanation furnished by him regarding the source of that money was found to be incorrect, and that from the simple fact that the explanation regarding the source of the money had been found to be false, it would be a remote and farfetched conclusion to hold that the money belonged to the assessee.

B] In A. Govindarajulu Mudaliar v. CIT the Court came to the conclusion that:

There is ample authority for the position that where an assessee fails to prove satisfactorily the source and nature of certain amount of cash received during the accounting year, the Income-tax Officer is entitled to draw the inference that the receipt is of an assessable nature.

C] In Kale Khan Mohammad Hanif v. Commissioner of Income-tax the Supreme Court, in answering the question Whether the burden of proving the source of the cash credit is on the assessee observed that:

It is well established that the onus of proving the source of a sum of money found to have been received by the assessee is on him. If he disputes liability for tax, it is for him to show either that the receipt was not income or that if it was, it was exempt from taxation under the provisions of the Act. In the absence of such proof, the Income-tax Officer is entitled to treat to as taxable income.

7.8 In view of the above I am of the considerate view that appellant has not discharged its primary onus and is merely raising claims but not submitting supporting evidences. The same is not acceptable under any law. Since the appellant failed to discharge his onus the action of learned AO is upheld.

7.9 Accordingly, the appeal of appellant is **dismissed**.

6. We have given our thoughtful consideration and find prima facie merit in assessee's submissions. A perusal of para 7.7 in the CIT(A)'s foregoing detailed discussion observes that the assessee had not filed the supporting evidence seeking to delete the impugned addition once M/s. Dongarai Infrastructure Private Limited already stood assessed qua the same. It emerges from the assessee's duly indexed paper book that it has filed takeover agreement pages (72 to 75), dissolution deed pages (76 to 79), certificate of incorporation page (80), copies of Form 26AS of M/s. Dongarai Infrastructure Private Limited, computation, acknowledgment, audit report, balance-sheet as well as P & L A/c as on 31.03.2011. Faced with the situation, we are of the view that larger interest of justice would be met in case the learned Assessing Officer verifies all these crucial facts once again in consequential proceedings, preferably within three effective opportunities of hearing. We order accordingly.

7. This assessee's appeal is partly allowed for statistical purposes.

Order pronounced in the open Court on 19.06.2023.

Sd/-
[DR. DIPAK P. RIPOTE]
ACCOUNTANT MEMBER

Sd/-
[SATBEER SINGH GODARA]
JUDICIAL MEMBER

Pune, Dated 19th June, 2023

VBP/-
Copy to

1.	The appellant
2.	The respondent
3.	The CCIT, Pune
4.	The CIT-1, Pune
5.	D.R. ITAT, Pune "A" Bench, Pune
6.	Guard File.

//By Order//

Assistant Registrar, ITAT, Pune Benches, Pune.