

IN THE INCOME TAX APPELLATE TRIBUNAL
“F” BENCH, MUMBAI
BEFORE SHRI M BALAGANESH, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 7387/Mum/2019 &
ITA No. 291/Mum/2022

(A.Y: 2011-12)

Vama Departmental Store Pvt Ltd., (Now Known as Vama Pvt Ltd.) Kanchanjunga, 72, Peddar Road, Mumbai – 400026.	Vs.	ACIT, Circle – 5(3) Room No. 573, 5 th Floor, Aayakar Bhavan, MK Road, Mumbai – 400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACV1262E		
Appellant	..	Respondent

Appellant by :	Mr.Prakash Jotwani & Ms.Yasmin Carnac.AR
Respondent by :	Mr.S.N Kabra.DR

Date of Hearing	02.06.2022
Date of Pronouncement	07.06.2022

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

These are the appeals filed by the assessee against the separate orders of the Commissioner of Income Tax (Appeals)-10, Mumbai passed u/s 143(3) r.w.s 147 and 250 of the Act.

Since the issues in these two appeals are common and identical, hence are clubbed, heard and consolidated order is passed.

For the sake of convenience we shall take the ITA No.291/Mum/2022 as a lead case and the facts narrated. The assessee has raised the following grounds of appeal.

Ground No 1: Ex-parte Order

1. The CIT(A) erred in dismissing the appeal and passing an ex parte order, without giving the Appellant sufficient opportunity of being heard and erred in not granting time to the Appellant for appointing professional lawyers to represent the case properly.

2. The CIT(A) erred in not deciding the appeal on merits of the case without being properly represented and erred in dismissing the appeal in the absence of the Appellant or its representative. Sri Prabodh Das vs. Mahamaya Das (SC).

3. Without prejudice to Ground No. 1 & 2 the learned CIT(A) erred in not disposing the grounds of appeal on merits as held by various High Courts decisions (Smt. Ritha Sabapathy Vs DCIT (Madras High Court))

Ground No. 2 : Condonation of delay

1. The learned CIT(A) erred in dismissing the appeal and not condoning the delay of 336 days in filing the appeal, although the Appellant had filed a detailed Affidavit explaining the difficulty in filing the return of income and

the appeal to first appellant authority within the specified time limit.

Without prejudice to Ground No. 1 & 2, grounds

Ground No. 3: Rent from Vama Apparels India Pvt. Ltd.

1. The learned CIT(A) erred in confirming the addition of Rs. 2,00,20,500/- being the alleged differential unaccounted rent and service charges purportedly received by the Appellant on the basis of a debit note found during survey conducted u/s. 133A on 25-11-02, in the premises of Vama Apparels India Pvt. Ltd (VAIPL).

2 The learned CIT(A) failed to take into consideration that the debit note seized by the department from VAIL was for AY. 1999-2000 and pursuant to assessment concluded for VAIL, no addition was made as undisclosed income or any unaccounted cash generation or any additional amount paid to Appellant on account of alleged debit note.

3. The learned CIT(A) failed to take into consideration the following orders, wherein the addition has been deleted in the hands of VAIPL and therefore no consequent addition can be made in the hands of the Appellant.

A.Y: 2000-01 Asst Order dated 30-12-2011

AY: 2001-02 : Asst Order dated 30-12-2011

AY: 2002-03 : Asst Order dated 23-12-2011

AY: 2004-05 : Asst Order dated 29-12-2008

Ground No. 4 : Rent from Vama Ford Motors Pvt. Ltd.

The learned CIT(A) erred in confirming the estimated addition of Rs. 1,51,04,400/- on the allegation that, Vama Ford Motors Pvt. Ltd. (VML) occupied part of the premises along with VAIPL and was paying rents in cash

to the Appellant, whereas in fact VML had vacated the premises since AY. 2001-02 and consequently there was no scope for department's contention that cash was siphoned from its petty Cash account.

2. The learned CIT(A) failed to take into consideration the following orders wherein the addition has been deleted in the hands of VM and therefore no consequent addition can be made in the hands of the Appellant.

AY: 2000-01 : CIT(A)'s Order dated 18-12-2003

AY: 2001-02 : CIT(A)'s Order dated 18-12-2003

Ground No. 5 : Business Income of Rs. 5,00,000/- The learned CIT(A) erred in making an addition of Rs. 5,00,000/- to the business income purely on a presumption and on an absurd basis, that the Assessee has been declaring business loss in the previous years.

Ground No. 6 : Rental income from Italian embassy - Rs. 1,00,00,000/-

The learned AO erred in estimating income from the Italian Embassy/Consulate to whom the Appellant's premises have been given out on leave and license basis at Rs. 1 crore, instead of restricting the actual income earned.

Ground No. 7 : Interest u/s. 234A & 234B

The learned AO erred in levying interest u/s. 234A & 234B

The Appellant craves leave to add, alter or amend the Grounds of Appeal at or before the hearing of the appeal.

2. The brief facts of the case are that the assessee company is engaged in the business of trading in

readymade garments and leasing out of properties. The assessee has filed the return of income for the A.Y.2004-05 with a total income of Rs.80,59,750/- and from A.Y.2005-06 to 2011-12 despite having taxable income, the assessee has not filed the return of income. The assessing officer (A.O.) after recording the reasons for reopening of Assessment for the A.Y.2011-12 has issued notice U/sec148 of the Act. Subsequently notice U/sec142(1) of the Act was issued. Since there are disputes pending before the legal forums and no proper compliance to the notice. The A.O. has relied on the predecessor observations / findings for A.Y.2001-02 in the assessment completed U/sec143(3)r.w.s 254 of the Act referred at page 3 of the order. Further on similar lines, the A.O. has computed the rent/compensation received from the concerns, M/s Vama Apparel (India) Pvt Ltd & M/s Vama Motors Pvt Ltd. and assessed the total income of Rs.3,20,87,430/- and passed the order U/sec143(3)r.w.s.147 of the Act dated 14-03-2014.

3. Aggrieved by the order of the A.O, the assessee has filed an appeal before the CIT(A) for Ay.2011-12 along with the other assessment years. The CIT(A) considered the grounds of appeal, findings of the A.O. and was not satisfied by the affidavit filed by the assessee explaining the disputes before the Honble High Court of Bombay for the delay in filling the appeals. Finally the CIT(A) has passed a common order for all the assessment year and dismissed the appeals on non maintainability. Whereas in respect of A.Y. 2011-12 the CIT(A) has passed two orders dated 29.02.2016 where in the CIT(A) has passed an ex-parte order and dismissed the appeal without considering the merits of the case and held that the delay in filing the appeal is not condoned. Whereas the second CIT(A)order was passed on 26.09.2019 after hearing the case on merits but the appeal was dismissed on the ground that the predecessor CIT(A) has already passed the order 29.02.2016. Against both the CIT(A)orders, the assessee wish to file the appeals before the Honble Tribunal and paid the filing fee of Rs.10000/- each. However while submitting all the 24 appeals for filling with the

Honble Tribunal, the appeal pertaining to A.Y 2011-12 against the CIT(A) order dated 29.02.2016 received on 11.12.2019 being a quantum appeal could not be filed.

4. The Ld.AR explained that the assessee has filed the appeal before the Hon'ble Tribunal against the order of the CIT(A) dated 29.09.2009. The Ld.AR submitted that the Hon'ble Tribunal has posted the present appeal ITA 7387/Mum/2019 along with other 22 appeals having similar facts and circumstances on 2-02-2022. Whereas the Hon'ble Tribunal after hearing the cases has passed the order dated 04.02.2022 in respect of 23 appeals and the same were restored to the file of the CIT(A) and some of the appeals are treated as infructuous because of duplicate appeals. Subsequently the assessee has filed Miscellaneous application (MA) in relation to ITA No. 7387/Mum/2019 referred at Para 13 of the ITAT order which state that "it has brought to our notice that the learned CIT(A) has passed a similar order on the same issue for the same assessment year and hence both agreed that this appeal was infructuous appeal in as

much as since the same order of the learned CIT(A) has been adjudicated in above appeals”.

5. The Ld. AR emphasized on the findings in Para 13, were the appeal was treated as infructuous only on the ground that the same issue for same year was restored to the file of the CIT(A). Whereas the assessee has filed an appeal for A.Y 2011-12 against the CIT(A) order dated 29.02.2016 which was received on 11.12.2019 before the Hon'ble Tribunal on 14.02.2022. The assessee has filed a MA on the ground that there was no appeal which pertains to A.Y 2011-12 that was sent back. We find the Hon'ble Tribunal in MA 53/Mum/2022 in ITA No. 7387/Mum/2019 A.Y 2011-12 dated 04.04.2022 has observed as under:

This Miscellaneous Application by the assessee is arising out of a common order of the ITAT dated 4.2.2022 which includes ITA No. 7387/Mum/2019 for A.Y. 2011-12. In the said order the ITAT has held as under with regard to appeals which are identical to the one in ITA No. 7387/Mum/2019 :-

“These twelve appeals are in connection with the same addition and penalty as referred above. It has been brought to our notice that learned CIT(A) has passed a similar order for the same issue as above again. Hence, both the parties agreed that these are infructuous appeals in as much as since the same order of

learned CIT(A) has been adjudicated in the above appeals. Hence, these appeals are dismissed as infructuous.”

2. Learned Counsel of the assessee submits that as regards ITA No. 7387/Mum/2019 is concerned the earlier order of learned CIT(A) in appeal before the ITAT was not heard on that date, hence, it is incorrect to hold that the appeal is infructuous since the same order of learned CIT(A) has been adjudicated in the above order by ITAT. Hence, learned Counsel of the assessee prayed that the said appeal be recalled and fixed for hearing alongwith ITA No. 291/Mum/2022 which is the earlier order of learned CIT(A) agitated before the ITAT on the same issue which has not yet been heard.

4. Learned Departmental Representative is fairly agreed with the above proposition. Accordingly, ITA No. 7387/Mum/2019 for A.Y. 2011-12 vide order dated 4.2.2022 is hereby recalled. The Registry is directed to fix the case for hearing in the normal course.

5. In the result, Miscellaneous Application stands allowed as above in as much as ITA No. 7387/Mum/2019 is recalled.

6. The Ld. DR fairly accepted the decision of the MA and therefore the ITA No. 7387/Mum/2019 is recalled and fixed along with ITA No. 291/Mum/2022. We find these appeals relate to the same assessment year and since the assessee has filed the appeal ITA 291/Mum/2022 against the order of the CIT(A) dated 26.09.2019, further the ITA No. 7387/Mum/2019 is no longer stands on its legs and dismissed as infructuous. Whereas the ITA No. 291/Mum/2022 A.Y

2011-12 is concerned, since the Honble Tribunal has restored the other appeals to the file of the CIT(A) to adjudicate on merits and pass the order as per Law. We follow the judicial precedence and restore the disputed issues to the file of the CIT(A) on the similar directions. The assessee should be provided adequate opportunity of hearing and should cooperate in submitting the information for early disposal of the appeal and allow the grounds of appeal of the assessee for statistical purposes.

7. In the result, the appeal filed by the assessee ITA no 7387/Mum/2019 is dismissed and ITA.No 291/Mum/2022 is allowed for statistical purpose.

Order pronounced in the open court on 07.06.2022.

Sd/-
(M BALAGANESH)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 06.06.2022

KRK, PS

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

ITA No. 7387/Mum/2019 &
ITA No. 291/Mum/2022
Vama Departmental Store Pvt Ltd, Mumbai

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1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, Mumbai / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

(Asst. Registrar)
ITAT, Mumbai

		Date	<u>Initial</u>	
1.	Draft dictated on	02.06.22		PS
2.	Draft placed before author	06.06.22		PS
3.	Draft proposed & placed before the second member			PS
4.	Draft discussed/approved by Second Member.			PS
5.	Approved Draft comes to the Sr.PS/PS			PS
6.	Kept for pronouncement on			
7.	File sent to the Bench Clerk			
8.	Date on which file goes to the AR			
9.	Date on which file goes to the Head Clerk.			
10.	Date of dispatch of Order.			
11.	Dictation Pad is enclosed			