

IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER AND
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.648/Mum./2023
(Assessment Year : 2007-08)

ITA no.621/Mum./2023
(Assessment Year : 2008-09)

M/s. Prakhhyat Corporate Services Pvt. Ltd.
505, Gupta Bhavan, Ahmedabad Street
Carnac Bunder, Mumbai – 400 009
PAN – AADPC6319B

..... Appellant

v/s

Income Tax Officer
Ward-7(3)(4), Mumbai

..... Respondent

Assessee by : Shri Satyaprakash Singh
Revenue by : Shri Shambhu Yadav

Date of Hearing – 27/06/2023

Date of Order – 28/06/2023

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeals have been filed by the assessee challenging the separate impugned orders dated 10/02/2023 and 25/02/2023, passed under section 250 of the Income Tax Act, 1951 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre [*"learned CIT(A)"*], for the assessment years 2008-09 and 2007-08, respectively.

2. Since both appeals pertain to the same assessee, involving similar additions on the basis of similar factual matrix, therefore, as a matter of

convenience, these appeals were heard together and are being disposed off by way of this consolidated order.

ITA No. 621/Mum./2023
Assessee's appeal-A.Y.2008-09

3. In this appeal, the assessee has raised the following grounds:-

"1. The order dated 10/02/2023 bearing No. ITBA/NFAC/S/250/2022-23/1049628807[1] by the CIT[A], NATIONAL FACELESS APPEAL CENTRE, DELHI is arbitrary, against natural justice, unlawful, against the provisions of Income Tax Act, 1961, invalid and therefore liable to be quashed.

2. On facts and circumstances of the case and in law, the Hon'ble C.I.T.(A), NFAC, Delhi has erred in not condoning the delay in filing of appeal being no sufficient cause shown for delay by the Appellant.

3. The appellant craves to alter, add, delete, substitute, or modify and other grounds of appeal."

4. The brief facts of the case as emanating from the record are: For the year under consideration, the assessee filed its return of income on 30/09/2008 declaring a total income of Rs.3,92,630. The return filed by the assessee was processed under section 143(1) of the Act. Subsequently, on the basis of the information received from the office of DGIT (investigation), Mumbai that search and seizure action was carried out in the case of Shri Praveen Kumar Jain and group, which was involved in providing accommodation entries of various types and the assessee is one of the beneficiaries who obtained accommodation entries of Rs. 42 lakhs and 8 lakhs during the year under consideration from the group concerns of Shri Praveen Kumar Jain, proceedings under section 147 of the Act were initiated in the case of the assessee and notice dated 27/03/2015 was issued under section 148 of the Act. In response to the aforesaid notice, the assessee submitted

that its original return filed under section 139(1) of the Act be treated as a return filed in response to the aforesaid notice. The reasons recorded for reopening the assessment were also provided to the assessee and the assessee's objections thereto were rejected. During the proceedings under section 147 of the Act, the assessee requested to issue the notice under section 133(6) of the Act to the two entities from whom the assessee was alleged to have availed accommodation entries. Accordingly, on the address provided by the assessee, summons under section 131 was issued to both the alleged loan creditors but the same was returned unserved by the postal authorities. The statement given by Shri Praveen Kumar Jain was provided to the assessee. The Assessing Officer ("AO") vide order dated 10/03/2016 passed under section 143(3) read with section 147 of the Act came to the conclusion that the assessee company entered into transactions of non-genuine nature with the group concerns of Shri Praveen Kumar Jain group. Accordingly, the AO treated the loan of Rs.50 lakhs as unexplained cash credit under section 68 of the Act. The AO also disallowed the interest expenses of Rs.5,55,670 in respect of the aforesaid non-genuine loan. Further in respect of the loan of Rs.3,25,90,000, in the absence of satisfactory evidence regarding the creditworthiness of the loan creditors and the genuineness of the transaction, the AO treated the said loan as unexplained cash credit under section 68 of the Act. The AO also disallowed the interest expenses of Rs.4,17,151 in respect of the aforesaid non-genuine loan. Accordingly, the AO assessed the total income of the assessee at Rs.3,89,55,450.

5. In the appeal before the learned CIT(A), despite various notices being issued, no reply/submission was filed on behalf of the assessee. Accordingly, vide impugned ex-parte order dated 10/02/2023, the learned CIT(A) dismissed the appeal filed by the assessee. Being aggrieved, the assessee is in appeal before us.

6. We have considered the rival submissions and perused the material available on record. It is evident that the learned CIT(A) has passed the order ex-parte due to the non-appearance of/on behalf of the assessee. As per the learned Authorised Representative ("*learned AR*"), the notices issued by the learned CIT(A) sent through email were not received by the assessee, and some of the notices were issued during the Covid period, and thus the same could not be attended. Now in appeal before us, the assessee is duly represented by the learned AR and wishes to pursue the litigation against the additions made by the AO. As per the learned AR, the details supporting the genuineness of the transaction and creditworthiness of the loan lenders form part of the paper book. However, we find that these documents were neither considered by the AO nor the same were considered by the learned CIT(A) while dismissing the assessee's appeal vide impugned order. As evident from the record, the AO merely on the basis of the statement of Shri Praveen Kumar Jain, recorded during the course of search and seizure action, rejected the claim of the assessee. Further, since the assessee did not comply with the hearing notices issued by the learned CIT(A), thus these details could not be filed before the learned CIT(A). Therefore, in view of the above, we deem it appropriate to restore the issues arising in the present appeal to the file of the

AO for *de novo* adjudication after consideration of all the details/submissions as filed by the assessee. Needless to mention that no order shall be passed without affording reasonable opportunity of hearing to the assessee. Further, the assessee is directed to provide all the information to the AO, as may be sought, without any default. It is also needless to mention that the AO shall be at liberty to take all the necessary steps as per law, including issuing notices under section 133(6) as well as summons under section 131 of the Act, to thoroughly investigate and examine all the facts in the remand proceedings. As a result, the impugned order passed by the learned CIT(A) is set aside. Accordingly, grounds raised by the assessee are allowed for statistical purposes.

7. In the result, the appeal by the assessee for the assessment year 2008-09 is allowed for statistical purposes.

ITA No. 648/Mum./2023
Assessee's appeal-A.Y.2007-08

8. In this appeal, the assessee has raised the following grounds:-

"1. The order dated 25/02/2023 bearing No. ITBA/NFAC/S/250/2022-23/1050124926[1] passed by the CIT[A], NATIONAL FACELESS APPEAL CENTRE, DELHI is arbitrary, against natural justice, unlawful, against the provisions of Income Tax Act, 1961 and therefore liable to be quashed.

2. On facts and circumstances of the case and in law, the Hon'ble C.I.T.(A), NFAC, Delhi has erred in confirming the disallowance of Rs.60,00,000/- as unexplained credit under section 68 of Income Tax Act, 1961 in respect of unsecured loan.

3. The appellant craves to alter, add, delete, substitute, or modify and other grounds of appeal."

9. In this appeal also, the assessee has challenged the addition made under section 68 of the Act on the basis of the statement of Shri Praveen Kumar Jain recorded during the course of search and seizure action under section 132 of the Act. We find that in this year, the notice issued under section 133(6) of the Act issued to the sole entity was duly responded and the reply was received by the AO. However, despite the aforesaid, the AO proceeded to make the addition under section 68 of the Act by placing reliance upon the statement of Shri Praveen Kumar Jain. Therefore, we deem it appropriate to restore the issues arising in the present appeal to the file of the AO for *de novo* adjudication with similar directions as rendered above. As a result, the impugned order passed by the learned CIT(A) is set aside. Accordingly, grounds raised by the assessee are allowed for statistical purposes.

10. In the result, the appeal by the assessee for the assessment year 2007-08 is allowed for statistical purposes.

11. To sum up, both appeals by the assessee are allowed for statistical purposes.

Order pronounced in the open Court on 28/06/2023

Sd/-
PRASHANT MAHARISHI
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 28/06/2023

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

*Pradeep J. Chowdhury
Sr. Private Secretary*

True Copy
By Order

Assistant Registrar
ITAT, Mumbai