

**IN THE INCOME TAX APPELLATE TRIBUNAL
“G” BENCH, MUMBAI
BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER &
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA No.877/Mum/2023
(A.Y. 2014-15)**

M/s Svadeshi Enterprise (Hubli) 12-A, 1 st Floor, Yusuf Building, Veer Nariman Road, Flora Fountain, Mumbai - 400 023	Vs.	ITO 17(3)(2) Mumbai - 400 020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAPFS0181B		
Appellant	..	Respondent

Appellant by :	Tejas Chandarana
Respondent by :	Harmesh Lal

Date of Hearing	07.06.2023
Date of Pronouncement	13.06.2023

आदेश / ORDER

Per Amarjit Singh (AM):

This appeal is filed by the assessee against the order passed by the NFAC, Delhi, dated 15.03.2023 for A.Y. 2014-15. The assessee has raised the following grounds before us:

- “1. The learned CIT(A) has erred in law and on facts in passing the ex-parte order and thereby confirming the order passed by the Assessing Officer. The learned CIT (A) has erred in not granting proper opportunity of hearing to the appellant.*
- 2. The learned CIT(A) has erred in law and on facts in confirming the disallowance of compensation paid to M/s. Svadeshi Enterprise (Mumbai) amounting to Rs.10,00,00,000/-.*
- 3. The learned CIT(A) has erred in law and on facts in confirming the disallowance of commission and brokerage expenses of Rs.1,12,36,000/-
The appellant craves leave to add to, amend, alter or delete all or any of the foregoing grounds of appeal.”*

2. Fact in brief is that return of income declaring total income of Rs.136,30,420/- was filed on 28.11.2022. The case was subject to scrutiny assessment and notice u/s 143(2) of the Act was issued on 28.08.2015. During the course of assessment the AO noticed that assessee has paid compensation of Rs.10,00,00,000/- to M/s Svadeshi Enterprises, Mumbai. On query, the assessee explained that assessee firm purchased a land at Hubli Karnataka from Svadeshi Mills Pvt. Ltd. for the purpose of development. The assessee firm has also taken loan from the banks for the development of Hubli project in the earlier years and same was not repaid, therefore, Svadeshi Enterprises, Mumbai has provided help to the assessee by arranging finance for the development of construction of its projects at Hubli. The assessee further submitted that since 1989 to 1990 to 2013-14 at various occasion Svadeshi Enterprises, Mumbai had given money to the assessee as per its requirement for development and construction of the said project at Hubli. The assessee has also shown closing credit balance from 31.03.2008 to 31.03.2014 in its books of accounts as reproduced at page 3 of the assessment order the closing credit balance in favour of Svadeshi Enterprises as on 31.03.2014 was of Rs.15,51,85,849/-. The assessee also explained that they could not manage to sell the project at Hubli therefore, they have mutually decided to provide Svadeshi Enterprises Mumbai their share in the form of compensation in the revenue earned by the assessee from the sale of the said project at Hubli to the extent of minimum amount of RS.30% of revenue of Rs. 32,35,70,000/- which comes to Rs. 9,70,70,000/- which was rounded off to the amount of Rs. 10,00,00,000/- by way of compensation. However, the AO has treated the aforesaid transaction of the assessee of giving compensation to Svadeshi Enterprises as colourable device and added the same to the total income of the assessee.

3. Further the AO has also noticed that assessee has paid brokerage and commission for selling project at Hubli. However, the AO has disallowed the same on the basis of statement of Shri Mahesh Thosani that no services has been provided and commission/brokerage was offered due to personal relation.

4. The assessee filed the appeal before the ld. CIT(A). It is noticed that ld. CIT(A) has not decided the appeal of the assessee on merit but dismiss the appeal for want of non-prosecution.

5. During the course of appellate proceedings before us at the outset the ld. Counsel submitted before us that during the course of appellate proceedings before the ld. CIT(A), the assessee had sought adjournment but without providing any adjournment the ld. CIT(A) has passed order within 15 days of the request made for giving adjournment. Looking to the facts and circumstances we observe that the ld. CIT(A) ought to have adjudicated the issue contested the appeal on merit as per the material available on the record as contemplate in section 250(6) of the Income Tax Act that, the ld. CIT(A) would determine point in dispute and therefore, record reason on such point in support of his conclusion. Therefore, we restore this issue to the file of the ld. CIT(A) for deciding afresh on merit after providing opportunity to the assessee of being heard. The assessee is also directed to make compliance before the ld. CIT(A) in the set aside proceedings without any failure.

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

Order pronounced in the open court on 13.06.2023

Sd/-
(Sandeep Singh Karhail)
Judicial Member

Sd/-
(Amarjit Singh)
Accountant Member

Place: Mumbai
Date 13.06.2023

Rohit: PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.