

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH “F” MUMBAI

BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
MS. KAVITHA RAJAGOPAL (JUDICIAL MEMBER)

ITA No. 1261/MUM/2023
Assessment Year: 2018-19

Firestorm Electronics
Corporation Private Ltd.
104, the Summit Business Bay,
Off Andheri- Kurla Road, Off
western Express Highway, Opp.
Cinema/PVR Theatre,
Andheri(E) Mumbai- 400093

PAN NO. AAACF4730D

Appellant

Commissioner of Income Tax-
Appeals,
Vs. National Faceless Appeal Centre

Respondent

Assessee by : Krupa Gandhi/ Harshit Aggarwal
Revenue by : Shri Sunny Mathews, AR

Date of Hearing : 10/07/2023
Date of pronouncement : 12/07/2023

ORDER

PER OM PRAKASH KANT, AM

This appeal by the assessee is directed against the order dated 17.02.2023 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment year 2018-19, raising grounds as reproduced below:

*GROUND NO. 1: ORDER PASSED IN VIOLATION OF THE
PRINCIPLES OF NATURAL JUSTICE IS BAD-IN-LAW:*

1. *On the facts and circumstances of the case and in law, Hon'ble CIT(A) erred in passing the impugned order without giving a fair and reasonable opportunity of hearing to the Appellant in respect of addition made in the order and thereby violated the principle of natural justice.*
2. *He failed to appreciate and ought to have held that the order passed in a haste manner without providing proper opportunity of hearing to the Appellant and without considering submissions of the Appellant is bad-in-law and hence void-ab-initio*
3. *The Appellant, therefore, prays that the impugned order passed in violation of the principle of natural justice, be quashed.*

GROUND II: DISALLOWANCE U/S 14A OF THE ACT R.W.R. 8D AMOUNTING TO RS. 10,68,575/-

1. *On the facts and circumstances of the case and in law, the CIT(A) erred in upholding the action of the AO of disallowing a sum of Rs. 10,68,575/- u/s 14A r.w.r. 8D(2)(ii).*
2. *The Appellant prays that the AO be directed to delete or appropriately reduce the disallowance made u/s 14A r.w.r. 8D(2)(ii).*

GROUND III: ADDITION OF DISALLOWANCE U/S 14A R.W.R. 8D TO BOOK PROFITS COMPUTED U/S 115JB OF THE ACT AMOUNTING TO RS. 10,68,575/-:

1. *On the facts and in the circumstances of the case and in law, Hon'ble CIT(A) erred in upholding the action of the AO of adding the amount of Rs. 10,68,575/- disallowed u/s 14A r.w.r. 8D to the 'book profits' computed u/s 115JB of the Act.*
2. *The Appellant prays that the aforesaid addition to the 'book profit' computed u/s 115JB of the Act be deleted.*

GENERAL:

The Appellant craves leave to add, amend, alter and/or delete any/all of the above grounds of appeal.

2. At the outset, the Ld. Counsel of the assessee referred to ground no.1 of the appeal and submitted that the impugned order has been passed by the Ld. CIT(A) without taking into consideration submission of the assessee, therefore order being in violation of the principle of natural justice, matter might be sent back to the Ld.CIT(A) for deciding afresh after considering the submission of the assessee. The Ld. Counsel referred to paper book page no. 80, 81, 84, 85 and 87 of the paper book consisting of 125 pages and submitted that for hearing dated 02.02.2023 before the Ld. CIT(A), assessee sought adjournment upto 16.02.2023, which was duly acknowledged by the Income-tax department. The assessee filed submission before the Ld. CIT(A) on 16.02.2023, however, same were not considered and the Ld. CIT(A) passed impugned order on 17.02.2023. On the merit of the issue, the Ld. Counsel referred to the order of the Ld. Assessing Officer wherein he opined that all the mutual fund investment of the assessee were eligible for earning exempted income for the reason that no evidence was filed by the assessee to support that the all mutual funds were in the nature of growth scheme only and none of the investments belonged to dividend option scheme. The Ld. Assessing officer accordingly invoked Rule 8D of income-tax Rules, 1962(in short 'the Rules') and computed 1% of annualized average investment of Rs. 10,35,01,230/- for disallowance as against the suo-moto disallowance of Rs. 40,087/- in the return of income , which was

further increased to Rs.73,650/- during course of assessment proceedings. The Ld. Counsel submitted that all the mutual funds investment of the assessee were in growth scheme, which the Assessing Officer could have confirmed by way of his own research in public domain and there was no necessity for the assessee to file any evidences..

3. The Ld. DR on the other hand relied on the order of lower authorities.

4. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. It is evident that assessee did not complied to the notices issued by the Ld. CIT(A) dated 12.01.2023, 19.01.2023 and 25.01.2023. Regarding the notice dated 02.02.2023, the assessee before us has referred to page 84 of the paper book which is acknowledgment of adjournment sought by the assessee in the relation to hearing dated 02.02.2023. Further, the assessee before us has referred to submission filed on 16.02.2023, which is available on paper book page no. 85 to 88 of the paper book. However, we find the Ld. CIT(A) has decided the appeal on 17.02.2023 wherein the submission filed by the assessee dated 16.02.2023 have not been considered. As far as issue on merits is concerned, the assessee failed to file evidence in support of its contention that all the mutual funds investment of the assessee are growth scheme only, where there was no exempted income either by way of dividend or by way of long term capital gain. As the submission of the assessee have not been considered ,

in the facts and circumstances of the case, we feel appropriate to restore this issue in dispute back to the file of Ld. CIT(A) for deciding afresh after considering the submission of assessee on the issue of the disallowance u/s 14A both under regular provision as well as under computation of book profit u/s 115JB of the Act. The Ld. CIT(A) directed to take into consideration submission of the assessee and if so required may call for remand report from the Assessing officer and then decide the issue in accordance to law.

5. In the result ground no.1 of the appeal of the assessee is allowed, whereas Ground nos 2 and 3 of the appeal are allowed for statistical purpose.

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

Order pronounced in the open Court on 12/07/2023.

Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai;
Dated:12/07/2023
Shubham P. Lohar

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,
(Assistant Registrar)
ITAT, Mumbai