

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'D' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.1602/Mum/2023
(Assessment Year :2017-18)**

M/s. Royal Bombay Yacht Club Chhatrapati Shivaji Maharaj Marg Apollo Bunder Colaba, Mumbai- 400001	Vs.	ITO Ward 17(3)(2) Mumbai
PAN/GIR No.AAAAR0071R		
(Appellant)	..	(Respondent)

Assessee by	Shri Firoze B Andhyarujina
Revenue by	Smt.Mahita Nair
Date of Hearing	19/07/2023
Date of Pronouncement	21/07/2023

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the assessee against the order dated 29/03/2023 passed by NFAC, Delhi for the quantum of assessment passed u/s. 143(3) for the A.Y.2017-18.

2. In various grounds of appeal, assessee has challenged the order of the ld. CIT (A) that the impugned order has been passed without deciding on merits and that assessee appeal has been

dismissed merely on the ground of non-compliance when the assessee could not respond from physical to migration to new faceless scheme. Apart from that, assessee has also challenged the following additions:-

a. Royalty received from non-resident Rs. 5,12,75,575. It may be noted that in the first place no royalty at all is received from non-resident or from any club and hence the alleged amount is purely fictitious and imaginary.

b. Disallowance of amount of sundry creditors under section 41(1) unpaid for three years Rs. 15,48,309. It may be noted that subsequent to the period of three years till date, the assessee has paid an amount of Rs. 12,66,706 and this can be clearly borne out from the ledger account where party wise details of amount paid subsequently is shown. Thus, the addition u/s 41(1) cannot survive.

c. Disallowed amount decapitalized Rs. 1,18,20,607. As it was found that items of repairs were capitalized hence the same were decapitalized and claimed as revenue expenditure and consequently the depreciation was reversed.

d. Under any event the amounts cannot be taxed based on the operation of principals of mutuality.

3. Before us, the ld. Counsel for the assessee that assessee has challenged the assessment order determining the total income at Rs.1,42,59,642/- as against the returned income of Rs.8,28,015/- after making various additions / disallowances. Even the AO has not considered the submissions and almost it an ex parte order. The ld. CIT(A) noted that certain notices were sent through mail on five occasions on which no compliance was

made and accordingly, the appeal of the assessee has been dismissed without deciding on merits and for want of prosecution. He further submitted that, since this was the first year of faceless appeal and assessee was not aware of the notices of the communication sent and hence, proper representation could not be made and assessee could not follow-up the dates on ITB portal. Apart from that, he submitted that even the ld. AO has not considered various submissions which is evident from the fact that he has made huge addition on account of 'Royalty' received from non-resident of Rs.5,12,75,575/-, whereas the fact of the matter is that no such 'Royalty' has been received at all. He submitted that in the interest of justice, this matter can be restored back to the file of the ld. AO to explain and substantiate the points raised by the ld. AO because even at the state of ld. AO documents have not been properly considered.

4. Ld. DR submitted that sufficient opportunity was given to the assessee by AO and CIT (A). Any case she has no objection if matter is remanded back to be decided on merits

5. After considering the facts and perusal of record and the submissions made by both the parties, we find that in so far as ld. CIT (A) is concerned, he has dismissed the appeal for want of prosecution as there was no compliance of notices sent through e-mail and the date mentioned in the ITB portal. To this it has been stated that the assessee was not aware of the new faceless system and was dependent upon the authorised representative who could not follow up the matter. Even before the ld. AO, it is

seen that assessee has not complied with show-cause notices during transition of faceless assessment proceedings and as a result huge additions have been made. In the interest of justice, we feel that matter should be restored back to the file of the AO to decide the issue afresh after giving due opportunity of hearing to the assessee and assessee is also directed to comply with the notices and substantiate its case. Thus, ld. AO shall pass a fresh assessment order in accordance with law.

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

Order pronounced on 21st July, 2023.

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Mumbai; Dated 21/07/2023
KARUNA, *sr.ps*

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

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,

(Asstt. Registrar)
ITAT, Mumbai