

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "E" MUMBAI

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

ITA No. 968/MUM/2023
Assessment Year: 2018-19

M/s Tera Naturals
Resources Pvt. Ltd.,
401/411 Raheja Centre,
Nariman Point,
Mumbai-400021.
PAN No. AAECT 8904 B
Appellant

Vs.

ITO Ward 3(3)(3),
Room No. 672, Aayakar Bhavan,
M.K. Road, Churchgate,
Mumbai-400020.

Respondent

Assessee by : Mr. Dharan Gandhi
Revenue by : Mr. Sanjay Deshmukh, CIT-DR

Date of Hearing : 08/08/2023
Date of pronouncement : 21/08/2023

ORDER

PER OM PRAKASH KANT, AM

This appeal by the assessee is directed against order dated 25.01.2023 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 following grounds:

1. (a) The Ld. CIT (Appeals) erred in law and facts in confirming the addition made by the National e-Assessment Center (NeAC) amounting to Rs.54,61,29,865/-u/s.68 and 69 of the Act without conducting any independent enquiries to pursue the actual facts of the case and merely relying on



findings of the NeAC which itself was based on surmises and conjectures.

2. Briefly stated facts of the case are that for the year under consideration, the return of income filed by the assessee was selected for limited scrutiny for verification of foreign outward remittances sent by the assessee. The statutory notices under the Income-tax Act, 1961 (in short 'the Act') were issued and complied with. However, no details were submitted by the assessee to the Assessing Officer. The Assessing Officer (AO) in para 4 of the assessment order passed on 07.05.2021 u/s 143(3) of the Act, has mentioned the various notices issued, of which no compliance was made except seeking adjournment by the assessee. The Assessing Officer verified the available records and observed that in the profit and loss account, sales and purchases were disclosed at Rs. Nil. The other income was only Rs.500 and net loss of Rs.23,256/- was only claimed in the profit and loss account. The Assessing Officer also observed that the information collected from DBS Bank Ltd. was not found matching with the outward and inward foreign remittance. The assessee took the plea of the prevailing Covid situation and death of the accountant for seeking adjournment but still after availing the adjournments, ultimately no information was filed before the AO, thus, the AO decided the assessment on the basis of the evidence available on record and made addition for unexplained expenditure of outward foreign remittance amounting to Rs 54,61,29,865/- u/s 68 & 69 of the Act. On further appeal,



the assessee took two adjournments before the Ld. CIT(A) and thereafter no compliance was made on other two occasions. In the circumstances, the Ld. CIT(A) dismissed the appeal of the assessee in default observing as under:

“6.2 The facts of the case as noted above are that the appellant has not pursued the appeal despite assessee being granted several opportunities. In response to the notices dated 29.08.2022 & 22.09.2022 the assessee had requested for adjournments which were considered at that time and further opportunities were given to the assessee. Vide notices dated 01.11.2022 & 10.01.2023 it was also made clear that already adjournments had been provided twice and in case no reply was received then it shall be deemed that you have nothing to say in this matter and the case would be adjudicated as per material available on record. Clearly therefore no details, documents or submissions have been provided to come to any conclusion other than those arrived at by the assessing officer in the assessment order. Being quite aware of these facts and the possible conclusions that may be drawn the assessee did not file any written submissions. That clearly Connotes that the assessee deems itself to be on weak footing and thus remained incommunicado. On perusal of assessment order also it gets revealed that assessee was not co-operating during assessment proceedings. As per assessment order, at first the assessee denied any foreign outward remittance then on being confronted with evidence from DBS bank in possession of the department the assessed decided, in its own wisdom, not to respond even after adjournments had been granted. It is evident from insight portal as well as the information provided by DBS Bank the file as called for under section 133(6) of the IT Act that the assessee company remitted substantial amounts through DBS Bank. The DBS Bank in its compliance furnished KYC of




the accounts and bank statement of the assessee company. On close perusal of bank statement of the assessee total of remitted amount and remitting charges of 399 counts comes to Rs. 54,61,29,865/- and corresponding credits of 215 counts comes to Rs.54,61,16,548/- On going through the underlying information elements, it was also evident that the remitted amount was not commensurate with the balance sheet or profit or loss accounts of the company.

The department in the absence of any pursuance in the matter of any sort even till the date of passing order is left with no choice but to finalize the case against the assessee. There is no evidence propounded in respect of what was claimed in the "Statement of facts" namely wrong addition of Rs. 54,61,29,865/- u/s 68 & 69 of the Act on account of outward foreign remittances. There are no evidences canvassed in respect of the other claims made in the 'Statement of Facts' either. The AO's order needs no intervention. There is nothing to rebut what had been arrived at by the AO after diligent enquiries and sufficient opportunities. The findings, in respect of all the above issues, clearly require no intervention."

3. Before the Tribunal, in response to the notice sent on 22.05.2023 for hearing dated 19.06.2023, none attended. Thereafter, another notice was issued for hearing dated 24.07.2023. On that day none attended but only a written request was filed for adjournment. The case was adjourned to 27/07/23 and a notice was issued through registered post for intimation and one copy of which was also served through income-tax Department. The service report submitted by the Id. Departmental Representative (DR) alongwith Inspector report is reproduced as under:



	Government of India Office of the Income Tax Officer-3(3)(3), Mumbai 672, Aayakar Bhawan, Maharshi Karve Road, Marine Lines, Mumbai 400020 Email: mumbai.ito3.3.3@incometax.gov.in
	No.ITO-3(3)(3)/Report/2023-24 Date: 26.07.2023

To,
The Commissioner of Income Tax(DR)
ITAT, E-Bench,
Mumbai.

Sir,


Sub: Report on Service of Notice of hearing issued by the Hon'ble ITAT bearing ITA No. 968/M/23 for A.Y. 2018-19 in the case of M/s Tera Naturals Resources Pvt. Ltd -reg.
Ref: CIT(DR)/ITAT 'E' Bench/Notice of hearing/2023-24 dt. 24.07.2023

Kindly refer to the above.

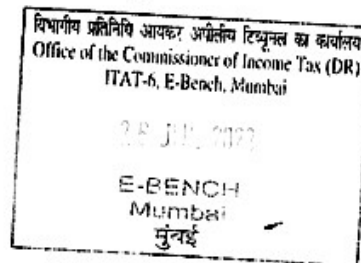
2. A notice of ITAT dt. 24.07.2023 received for service to the assessee. After receiving the said notice, the Inspector and Notice Server of this ward have directed to visit office premises but they said that the said assessee company is not existing at address: 401/411 Raheja Centre, Nariman Point, Mumbai -400 021. Inspector's report is attached herewith for your kind perusal. Meanwhile, this office has sent an email to the assessee on the email: yogendrapandey345@gmail.com, dipen15.groupmrp@gmail.com, rupali@groupmrp.com and rupali.groupmrp@gmail.com on 24.07.2023 at 4.10 pm and 4.23 pm. The copy of both the emails and email delivery reports are enclosed herewith for your kind perusal. However, the assessee has not responded to email as on date.

3. The aforesaid unserved notice is hereby returned to you.

Yours faithfully,


(Sunil S. Kolhe)
Income Tax Officer-3(3)(3),
Mumbai.

Encl: As above.





Date: 26.07.2023

To,
The Income Tax Officer-3(3)(3)
Mumbai.

Sir,

Sub: Report on Service of Notice of hearing issued by the Hon'ble ITAT bearing ITA No. 968/M/23 for A.Y. 2018-19 in the case of Tera Naturals Resources Pvt. Ltd -reg.
Ref: Notice of hearing issued vide letter dt. 24.07.2023

Kindly refer to the above.

2. As directed, the undersigned visited the premises at 401/411 Raheja Centre, Nariman Point, Mumbai -400 021 to serve notice of hearing as issued by the Superintendent, ITAT, Mumbai dt. 24.07.2023 in the case of M/s Tera Naturals Resources Pvt. Ltd for ITA No. 968/M/23 for A.Y. 2018-19. However, it is found that no such company exists at the above mentioned address. On the said address entities namely: Mysore Petro Chemicals Ltd, IG Petro Chemicals Ltd and Chanakya Wealth Recreation Centre are existing.

Therefore, the above fact is hereby submitted for your kind information.

In the presence of Notice Server.

Shri Pradeep Chavan

Yours faithfully,

(Mihir Jha)
Inspector,
O/o, ITO 3(3)(3),
Mumbai.

3.1 On hearing dated 27/7/23, again none attended however a written request was made on behalf of the authorised signatory of the assessee for seeking further time. Accordingly, matter was posted for hearing on 08.08.2023. On said date again an adjournment was filed on behalf of Advocate Shri Dharan V. Gandhi by his junior, but no letter of authority by the assessee was filed. So in first round of call, adjournment request was rejected and the person attended was asked to file letter of authority in favour of Mr Dharan V Gandhi .In second round of call of case, Mr Djaran V Gandhi appeared and submitted that he would file the said letter of



authority by 2.00 P.M. of that day. Accordingly, on his undertaking, arguments on behalf of the assessee were heard. He also complied with his undertaking of filing the letter of authority before the time permitted.

4. We have heard rival submission of the parties. We find that the assessee is non-compliant not only before the Ld. CIT(A) but also before the Assessing Officer. The issue in dispute raised before us has not been decided on merit by the Ld. CIT(A) also. Before us the ld Counsel pleaded for restoring the case back to the Assessing officer for the reason that once it is restored to the AO, there will not be any liability to pay outstanding tax demand. We don't agree with said prayer, because before us the assessee has not filed any additional evidences to be examined by the AO. It is the case of no representation before the ld CIT(A) and *ex-parte* decision by the ld CIT(A). If the assessee is so advised for filing additional evidence before the ld CIT(A), then he may follow the procedure laid down in Rule 46A of Income-tax Rules, 1962 and then the ld CIT(A) may decide the issue in accordance with law. Therefore, we feel it appropriate to restore this issue back to the Ld. CIT(A), but looking to the non-compliance behavior of the assessee before the lower authorities and wastage of their time and energy, we impose a cost of Rs.25,000/-. The appeal is accordingly restored back to the Ld. CIT(A) subject to deposit of said cost to the Prime Minister Relief Fund within 15 days of receipt of this order. The Ld. CIT(A) shall



verify deposit of the cost by the assessee before commencing the proceeding before him.

5. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 21/08/2023.

Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai;

Dated: 21/08/2023

Rahul Sharma, Sr. P.S.

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