

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "B", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER
ITA No. 3598/Mum/2018 (A.Y.2009-10)

M/s Balaji Universal Tradelink Pvt. Ltd.

118/120, 3rd Floor, Ashoka House,

Zaveri Bazar,

Mumbai-400 002

PAN: AIVPB1665R

..... Appellant

Vs.

DCIT Cen. Cir. 7(1)

Maharashtra, Mumbai

..... Respondent

Appellant by : None
Respondent by : Ms. Ketaki Desai, Ld. DR

Date of hearing : 27/06/2023
Date of pronouncement : 22/08/2023

ORDER

PER GAGAN GOYAL, A.M:

This appeal by assessee is directed against the order of Ld. CIT (A)-49, Mumbai dated 28.03.2018 u/s. 250 of the Income Tax Act, 1961 (in short 'the Act') for A.Y. 2009-10. The assessee has raised the following grounds of appeal:-

- 1. The order of the assessing officer is erroneous on the facts and in the law. On the facts and in the circumstances of the case he ought to have accepted the returned income.*

2. *On the facts and in the circumstances of the case and in law, the Ld. A. O. erred in assessing the income of your appellant at Rs. 1,56,69,45,770/- as against returned income of Rs. 67,55,462/-, Your appellant disputes wrongful variations and submits that his returned income to be accepted as correct.*

3. *On the facts and in the circumstances of the case and in law, the Ld. A. O. erred in making an addition of Rs.5,64,40,893/- on account of unexplained sale credit to one of its customers named M/s Bafna Exim Pvt. Ltd. under section 68 of the IT Act, 1961 as taxable income.*

Looking to the facts and in the circumstances of your Appellant's case the said addition made by the Ld. A.O. is incorrect and invalid and ought to be deleted as the provisions of section 68 has been complied with.

4. *In reaching to the conclusion and making the aforesaid additions/ disallowances, the Ld. A.O. omitted to consider relevant factors, considerations, principles and evidences while he was overwhelmed, influenced and prejudiced by irrelevant considerations and factors.*

5. *The Ld. A.O. erred in imposing Interest under section 234B and 234C of the IT Act, 1961.*

6. *The Ld. A.O. erred in initiating penalty proceedings u/s 271(1)(c) of the Income Tax Act, 1961.*

ADDITIONAL GROUNDS OF APPEAL UNDER RULE-11

1. *Validity of re-assessment proceedings:*

1.1 *The Assessing Officer has erred in making multiple assessment orders for the same assessment year.*

1.2 *The Appellant submits that the considering the facts and circumstances of its case and in law prevailing on the subject the reassessment proceedings*

were not in accordance with the law and the provisions of the Income Tax Act, 1961.

1.3 The appellant submits that the reassessment proceedings be held to be bad in law and struck down.

2. Because, in any view, specific mention by the A.O. in the reasons recorded for reopening the completed assessment of the failure of the assessee to disclose fully and truly all material facts necessary for the assessment, is the sine qua for assuming jurisdiction u/s. 147 of the Act in a case falling under the proviso thereto and in the absence thereof makes the action taken by the A.O. wholly without jurisdiction.

3. The CIT (A) erred in not appreciating that the A.O. in his Assessment Order merely reproduced the information/report received from D.D.I.T. (Inv.) without confronting copy of the same to the appellant company. The A.O. has issued reopening notice simply on the basis of information received from D.D.I.T. (Inv.). This is clearly breach of settled position of law that reopening notice has to be issued by the A.O. on his own satisfaction and not on borrowed satisfaction.

4. The Assessment Order u/s.143(3) r.w.s.153A of the Income- tax Act determining total income of the assessee company at Rs.151,05,04,880/- was quashed for want of jurisdiction by the Hon'ble Tribunal, vide their Order dated 29th April, 2022. Can such an assessment u/s.153A r.w.s. 143(3) be reopened and if reopened, can the additions made in reassessment proceedings will survive?

The Appellant Company craves leave to add, to amend, alter or vary the Grounds of Appeals either before or at the time of hearing of the Appeal.

2. The brief facts of the case are that a search and seizure action u/s 132(1) of the Act was carried out at the residential premises of Shri Manoj B. Punamiya and Shri Arvind Vyas and others by the Investigation Wing on 30.10.2009 and subsequent dates in which assessee was one of the associates. The case of the assessee was assessed on 07.08.2012 u/s. 143(3) r.w.s. 153A of the Act at a figure of Rs. 151,05,04,880/-. In its grounds of appeal, assessee conveyed that the Assessment Order u/s.143(3) r.w.s. 153A of the Income- tax Act determining total income of the assessee company at Rs. 151,05,04,880/- was quashed for want of jurisdiction by the Hon'ble Tribunal, vide their Order dated 29th April, 2022. Thereafter, an information was received from the DDIT (Inv.), Unit 6(4), Mumbai vide letter dated 23.03.2016 that a survey was conducted on Shri Anil Kumar Jain and Shri Praveen Kumar Jain, who are engaged in huge high volume transactions through RTGS /Clearing/Cash/Transfer from various accounts which was immediately withdrawn by cash/ multiple transfer made to other accounts. Money was rotated within a certain group of accounts and the funds were moved out through clearing or foreign outward remittances.

3. Shri Anil Kumar Jain and Shri Pravin Kumar Jain had opened various accounts for the fictitious transactions, one of which was M/s Bafna Exim Pvt. Ltd. It was found that M/s Balaji Universal Trade links Pvt. Ltd. has undertaken certain transactions with it. An amount of Rs. 1,58,00,000/- was received by M/s Balaji Universal Trade links Pvt. Ltd. from the accounts of M/s. Bafna Exim Pvt. Ltd. In view of the above facts and on the basis of the concrete materials available case was re- opened after recording reasons for re-opening and taking necessary approval u/s. 151 of the I.T. Act, 1961

(hereinafter "the Act") from the higher authorities. Subsequently notice u/s 148 of the Act was issued on 30.03.2016.

4. In response to the notice, the assessee submitted a letter dated 07.04.2016 and requested to treat the return of income u/s 139 declaring total income at Rs. 67, 55,462/- of the Act as Return of income filed u/s 148 of the Act. The assessee also filed copy of the acknowledgment of return of income filed on 21.09.2009 along with this letter. The case of the assessee was assessed at Rs. 156, 69, 45,773/-. Assessee being aggrieved with this order of AO, preferred the appeal before Ld. CIT (A)-49, Mumbai, who in turn confirmed the order of AO and sustained the additions made in the assessment order.

5. Assessee being further aggrieved preferred the present appeal before us. We have gone through the order of AO, order of the Ld. CIT (A) and submissions of the assessee alongwith paper book and case laws relied upon. We observed that original assessment in this case was framed u/s. 153A of the Act at a figure of Rs. 151,05,04,880/- vide order dated 07.08.2012 (this assessment order was quashed by Coordinate Bench for want of jurisdiction. Now, the present appeal filed by the assessee is against the assessment order framed u/s 143(3) r.w.s. 147 of the Act. In this assessment proceedings, the only addition made was Rs. 5, 64, 40,893/- based on the information received from the office of DDIT (Inv.) mentioned (supra). Rest of the figures were taken as it is from the assessment order framed u/s. 143(3) r.w.s. 153A mentioned (supra) amounting to Rs. 151, 05, 04,880/-.

6. Assessee has raised 7 grounds in appeal, out of which ground no. 1 and 7 are general in nature, hence no adjudication is required. In addition to this, assessee raised 4 additional grounds vide application dated 25.04.2023. In the additional grounds, assessee challenged the validity of reopening of the case u/s. 148 and assessment made consequent to that u/s. 147. Before dealing with the merits and technicalities of the case, we deem it appropriate to bring on record the log of attendance by assessee i.e. appeal was filed on 24.05.2018, 1st hearing dated 30.05.2019 (none appeared), 2nd hearing dated 18.07.2019 (none appeared), 3rd hearing dated 05.11.2019 (none appeared), 4th hearing dated 13.11.2019 (none appeared) and the appeal was decided ex-parte proceedings vide order dated 22.11.2019. Thereafter, MA was filed on 30.12.2019. Again during the hearing of MA proceedings none appeared on 28th January 2022, 25th February 2022, 6th April 2022, 8th April 2022 and finally matter concluded on 22nd April 2022 and matter was recalled vide MA No. 633/Mum/2019 dated 26.05.2022. Again none appeared on 29.08.2022, 27.09.2022 and 27.06.2023 and on this date hearing concluded.

7. It is observed that assessee filed bulky paper books time and again, but on most of the effective date of hearing, assessee remained unrepresented. In a situation where assessee is not represented in the proceedings and consequently findings of the AO and Ld. CIT (A) remained uncontroverted, we do not find any reason to interfere with the order of Ld. CIT (A). Accordingly, we uphold the findings of Ld. CIT (A) and dismiss the appeal of assessee.

8. In the result, appeal of the assessee is dismissed.

Order pronounced in the open court on 22nd day of August, 2023.

Sd/-

(VIKAS AWASTHY)
JUDICIAL MEMBER

Mumbai, दिनांक/Dated: 22/08/2023

Sr. PS (Dhananjay)

Sd/-

(GAGAN GOYAL)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai