

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "E", MUMBAI
BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER

ITA No. 1305/Mum/2023 (A.Y.2011-12)

Ecotech Informatics Pvt. Ltd.

CTS No. 271, House no. 45A,
1st floor, R. No. 103, Chimbai
Road, Bandara (W),
Mumbai-400 050

PAN: AACCE4381R

..... Appellant

Vs.

ITO-12(2)(2)

Aayakar Bhavan,
M. K. Road,
Mumbai-400 020

..... Respondent

Appellant by : Shri Jayant R. Bhatt, Ld. AR
Respondent by : Shri Biswanath Das, Ld. CIT-DR

Date of hearing : 04/07/2023
Date of pronouncement : 25/08/2023

ORDER

PER GAGAN GOYAL, A.M.:

This appeal by assessee is directed against the order of National Faceless Appeal Centre (for short "NFAC") dated 29.12.2022 u/s. 250 of the Income Tax

Act, 1961 (in short 'the Act') for A.Y. 2011-12. The assessee has raised the following grounds of appeal:-

1. On the facts and circumstances of the Appellant's case and in law the Ld. Commissioner of Income Tax (Appeals) failed to comment on validity of the order passed u/s. 143(3) r.w.s. 147 of the Income Tax Act, 1961.

2. On the facts and circumstances of the Appellant's case and in law the Ld. Commissioner of Income Tax (Appeals) erred in not commenting on the fact that an opportunity to cross examination has not been awarded to the appellant.

3. On the facts and circumstances of the Appellant's case and in law the Ld. Commissioner of Income Tax (Appeals) erred in treating the unsecured loan received as non-genuine / bogus.

4. On the facts and circumstances of the Appellant's case and in law the Ld. Commissioner of Income Tax (Appeals) erred in confirming the additions made by the Ld. AO without appreciating the fact that the repayment of the loan taken has already been made.

5. On the facts and circumstances of the Appellant's case and in law the Ld. Commissioner of Income Tax (Appeals) erred in confirming the addition of Rs. 94,19,178/- by treating the loan received (peak credit) as unexplained cash credit u/s. 68 of the Income Tax Act, 1961.

6. The Appellant craves leaves to add, to amend, alter, modify and/or withdraw any or all of the above grounds of appeal, each of which are without prejudice to one another.

2. The brief facts of the case are that assessee company filed its return of income declaring total at Rs. 2,33,370/-. Return of the assessee was processed u/s. 143(1) of the Act. Thereafter, an information was received

from the office of DCIT, Central Circle 1(1), Dated: 24.11.2015 that assessee received accommodation entries from the entities controlled and floated by Praveen Kumar Jain Group, which are as under:-

| Sr. No. | Name of the Party | Amount | Date |
|---------|---------------------------------|-----------|------------|
| 1. | M/s Raghunandan Rayon Pvt. Ltd. | 50,00,000 | 29.07.2010 |
| 2. | M/s Atharva Business Pvt. Ltd. | 40,00,000 | 18.08.2010 |

& outsider parties:-

| Sr. No. | Name of the Party | Amount | Date |
|---------|------------------------------|-----------|------------|
| 1. | M/s Dev Sharing Pvt. Ltd, | 21,00,000 | 21.01.2011 |
| 2. | M/s MeghnaOrganicssPvt. Ltd. | 80,00,000 | 16.07.2010 |

Considering this information the case was re-opened and notice u/s. 148 of the Act was issued on 31.03.2016, after obtaining appropriate approval.

3. In response to the notice u/s. 148 of the Act, assessee vide letter Dated: 24.06.2016 stated the original Income Tax Return filed by the assessee on 29.09.2011 may be treated as the Income Tax Return filed u/s. 148 of the Act. Thereafter, notice u/s. 142(1) and 143(2) of the Act were issued vide Dated: 08.06.2016 and 03.08.2016. AO issued notice u/s. 133(6) of the Act to M/s. Raghunandan Rayans Ltd. and M/s. Atharva Business Pvt.

Ltd. to confirm the transaction amounting to Rs. 52,41,644/- and 41,77,354/- respectively. In response to assessee's submissions and other information in possession of AO, he observed as under:-

4.2 M/s Raghunandan Rayans Ltd. and M/s Arthav Business Pvt. Ltd are companies of controlled by a leading entry provider Praveen Kumar Jain. A brief background of the matter is that a search and seizure action was conducted u/s. 132 of the Act on Praveen Kumar Jain Group and these companies were found to be involved in the activities of providing accommodation entries and Shri. Praveen Kumar Jain has accepted that accommodation entries through various companies. Post search the cases on which search was conducted including M/s Raghunandan Rayans Ltd. and M/s Arthav Business Pvt. Ltd., were centralized with DCIT CC 1(1), Mumbai and the said Assessing officer DCIT CC 1(1) Mumbai has passed the order u/s. 153C of the Act.

4.3 This office has obtained the assessment orders u/s 153C of the Act in the case of M/s Raghunandan Rayans Ltd. and M/s Arthav Business Pvt. Ltd., in the said orders, the assessing officer [DCIT CC 1(1) Mumbai] has proved that these two companies are involved in the activities of providing accommodation entries for a commission at 2.4% of the transaction value of each entry provided as loans and advances. The assessing officer [DCIT CC 1(1), Mumbai] has added these commission incomes in the hands of the M/s Raghunandan Rayans Ltd. and M/s. Arthav Business Pvt. Ltd. This proves that the money which has come from the above two companies are nothing but accommodation entries of loans and advances.

4. Based on above information, AO added back the amount as unexplained cash credits u/s. 68 of the Act. Assessee being aggrieved with the same preferred an appeal before the Ld. CIT(A), who in turn confirmed the order of AO, as assessee never turned up before him to represent the matter and appeal order

u/s. 250 was passed *ex-parte*. Assessee being further aggrieved preferred this present appeal before us.

5. We have gone through the order of AO, order of Ld. CIT(A) and grounds raised by the assessee. It is observed that assessee never turned up before the Ld. CIT(A) during the appellate proceedings and Ld. CIT(A) categorically mentioned a log of notices issued and non-compliance by assessee vide page no. 3, para 4 of the appellate order. We have taken note of Assessee's letter filed before us vide Dated: 04.07.2023 also. Through this letter assessee itself accepted about its non-appearance and also tried to explain the reasons of its non-appearance. As per assessee earlier address of communication pertains to erstwhile consultant, who never attended the matter regularly. Through this letter assessee submitted active e-mail id and correct address for communication in future. Considering the order of Ld. CIT (A), i.e., *Ex-Parte* in nature and request of assessee, in all fairness of matter, we re-store the matter back to the file of Ld. CIT (A) for fresh adjudication of the matter on merits based on the submissions of assessee and after giving, assessee a fresh opportunity of being heard. Assessee is also directed to co-operate with the notices issued and participate in the proceedings.

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

Order pronounced in the open court on 25th day of August, 2023.

Sd/-

(AMIT SHUKLA)
JUDICIAL MEMBER

Sd/-

(GAGAN GOYAL)
ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated: 25/08/2023

Sr. PS (Dhananjay)

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