

**IN THE INCOME TAX APPELLATE TRIBUNAL,
'B' BENCH, KOLKATA**

**Before Shri Sanjay Garg, Jjudicial Member
&
Dr. Manish Borad, Accountant Member**

**I.T.A. No. 725/KOL/2023
Assessment Year: 2010-2011**

***M/s. Xylo Marketing Pvt. Limited,.....Appellant
(Formerly known as : Commit Marketing Pvt. Ltd.)
9/12, Lal Bazar Street, Mercantile Building,
Block-B, 3rd Floor, Kolkata-700001
[PAN: AADCC6225B]***

-Vs.-

***Deputy Commissioner of Income Tax,.....Respondent
Central Circle-3(2), Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square,
Kolkata-700069***

Appearances by:

*Shri Amit Agarwal, Advocate, appeared on behalf of the
assessee*

*Shri P.P. Barman, Addl. CIT, Sr. D.R., appeared on behalf
of the Revenue*

Date of concluding the hearing : September 06, 2023

Date of pronouncing the order : September 12, 2023

O R D E R

Per Dr. Manish Borad, Accountant Member:-

This appeal at the instance of assessee for assessment year 2010-11 is directed against the order of ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 17.05.2023,

which is arising out of the order under section 147 read with section 144 of the Act on 13.12.2017 framed by ld. ACIT, Central Circle-3(2), Kolkata.

2. The Registry has pointed out that appeals are time-barred by two days. After considering the explanation of the assessee, we condone the delay and proceed to decide the appeal on merit.

3. In response to the authorization of Director to file appeal submitted by Shri Naru Saha, Director of the assessee-company dated 17th July, 2023, we after going through the record deem it necessary to accept the authorization of Mr. Pradeep Kumar Garg, one of the Directors of the assessee-Company to sign the relevant documents as required for filing of appeal and we proceed to decide the appeal on merit.

4. We have heard the rival contentions and gone through the record carefully. The assessee has raised nine grounds of appeal. However, we find that the ld. 1st Appellate Authority has dismissed the appeal of the assessee for want of prosecution without adjudicating the issues on merit. The grounds of the assessee read as under:-

(1) That, on the facts and in the circumstances of the case, the Ld. C.I.T. (A), NATIONAL FACELESS APPEAL CENTER (NFAC), DELHI [hereinafter referred to as CIT(A)] erred in confirming the addition made by the Ld. Assessing Officer [hereinafter referred to as AO].

(2) That under the facts and in the circumstances of the case, Ld.CIT(A) erred in passing order ex-parte.

(3) That under the facts and in the circumstances of the case, the Ld. CIT (A) erred in ignoring the adjournment request filed by assessee on 12/05/2023 seeking adjournment up to 27/05/2023.

(4) That under the facts and in the circumstances of the case, the Ld. CIT (A) erred in confirming the addition of a sum of Rs. 1,00,00,000/- made by the AO under the section 68 of income Tax act. The addition is unjustified and need to be deleted.

(5) That on the facts and in the circumstances of the case and in law ,the LD.CIT(A) was wrong in ignoring the fact that the notice under section 147 is not jurisdictional since the necessary conditions as per the law were not fulfilled before the issuance of the same.

(6) That on the facts and in the circumstances of the case and in law, the LD.CIT (A) was wrong in ignoring the fact that the Ld. A.O. was wrong in reopening the case for reassessment proceedings u/s 148 of the Act on the basis of vague reason recorded.

(7) That on the facts and in the circumstances of the case and in law the Ld. CIT(A) was wrong in ignoring the fact that the Ld. AO failed to pass speaking order with the objections raised by the assessee before the AO.

(8) That on the facts and in the circumstances of the case and in Law. the Ld.CIT(A) was wrong in ignoring the fact that the Ld. AO was wrong in arriving at conclusion that the sum received by the assessee company is accommodation entry given to the appellant company is not justified.

(9) For that the order passed is infructuous since the principals since the principals of natural justice was not complied by not providing the opportunity of being heard to the appellant.

(10) That the appellant craves leave to add, alter, amend or withdraw any ground or grounds of appeal before or at the time hearing.

PRAYER: It is prayed that the order passed by C.I.T. (A), NATIONAL FACELESS APPEAL CENTER (NFAC), DELHI, be set aside and full relief may be granted to the appellant.

5. On due consideration of the above facts and circumstances, we are of the view that sub-section (6) of section 250 contemplates that Id. CIT(Appeals) would state the points in dispute and thereafter record reasons in support of conclusion on those points. A perusal of the impugned order would reveal that this mandatory procedure has not been followed by the Id. CIT(Appeals). Hence, the impugned order is not sustainable, it is set aside. The issues agitated by the assessee in the grounds of appeal extracted supra are remitted back to the Id. CIT(Appeals) for fresh adjudication on merit. The Id. Assessing Office having jurisdiction over the assessee would ensure the transmission of this record to the competent authority for allocation of this appeal to CIT(Appeals) through alleged National Faceless Disposal of the appeal.

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

Order pronounced in the open Court on 12th September, 2023.

Sd/-

(Sanjay Garg)
Judicial Member

Sd/-

(Manish Borad)
Accountant Member

Kolkata, the 12th day of September, 2023

*Copies to :(1) M/s. Xylo Marketing Pvt. Limited,
(Formerly known as : Commit Marketing Pvt. Ltd.)
9/12, Lal Bazar Street, Mercantile Building,
Block-B, 3rd Floor, Kolkata-700001*

(2) *Deputy Commissioner of Income Tax,
Central Circle-3(2), Kolkata,
Aayakar Bhawan, P-7, Chowringhee Square,
Kolkata-700069*

(3) *Commissioner of Income Tax (Appeals),
NFAC, Delhi;*

(4) *Commissioner of Income Tax- ;*

(5) *The Departmental Representative*

(6) *Guard File*

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By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.