

**IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, MUMBAI**

BEFORE SHRI N. K. CHOUDHRY, JM

I.T.A. No. 1551/Mum/2023
Assessment Year: 2010-11)

Ron Creations Pvt. Ltd.,
702/2B, Excellency Building, 4th
Floor, Cross Road,
Lokhandwala Complex,
Andheri (W), Mumbai-400053.

ITO-16(1)(5),
Room No. 439,
4th Floor, Aayakar Bhavan, M.K.
Road, Mumbai-400020.

Vs.

PAN No. **AAACR4958F**

Appellant)	:	Respondent)
Appellant/Assessee by Revenue/Respondent by	:	Sh. Atul Mehta & Uday Shah, CA Sh. Anurag Tripathi, DR
Date of Hearing	:	30.08.2023
Date of Pronouncement	:	26.09.2023

ORDER

Per N. K. Choudhry, JM:

The Assessee has preferred this appeal against the order dated 02.03.2023 impugned herein passed by Ld. Commissioner of Income Tax (Appeals)-4/National Faceless Appeal Centre (NFAC), Delhi {in short 'Ld. Commissioner'} u/s 250 of the Income Tax Act 1961 (in short 'the Act').

2. In this case, the Assessee had declared its total income at Rs. "Nil" by filling its return of income for the AY under consideration on 08.10.2010, which was processed under section 143(1) of the Act on dated 31.05.2011. Subsequently, on the information received from the

Investigation Wing, Mumbai qua hawala transactions entered into for goods or materials, it was found that the Assessee is also the beneficiary of hawala transaction. The following party i.e. Magnitude Trading Pvt. Ltd. (in short MTPL) was found to be indulging in hawala transaction by issuing bogus purchase bill without actual delivery of goods or materials, had made transactions with the Assessee-company. The Assessee has shown purchases amounting to Rs. 22,59,000/- from MTPL) whose name is also appearing in the list of hawala operators as available on the official website of the Sales Tax Department. Consequently, the case of the Assessee was re-opened and notice under section 148 of the Act dated 18.03.2014 was issued and served upon the Assessee. Thereafter statutory notices were also issued to the Assessee. The Assessee by filing its reply with requisite details claimed to have shown purchases of Rs. 22,59,000/- of Arri Camera Lenses from MTPL and produced the invoice and bank statement through which the Assessee has paid money, however, failed to produce the PAN no. of the party i.e. MTPL, therefore, in order to verify the genuineness of the transaction and to ascertain the identity of the seller, notice under section 133(6) of the Act dated 23.02.2015 was sent to MTPL by post, however the same was returned back by the postal authority as un-served with the remarks "Not Known". Therefore, the AO show-caused the Assessee to produce the party in order to establish the genuineness of transaction and to ascertain the identity of the payer, which the Assessee has failed, therefore, the transaction of purchase of Arri Camera Lenses for the amount of Rs. 22,59,000/- from MTPL was treated as unexplained cash credit under section 68 of the Act by the AO and added back to the total income of the Assessee.

Further, the AO by perusing the details filed by the Assessee also realized that during the year under consideration, the Assessee has sold old camera lenses for the amount of Rs. 13,00,000/- to M/s Richie Enterprises, having address as 17241 Arye Plae, Granada Hills CA, 91344, USA. As the Assessee could produce only the confirmation and bank account of its own in which money from the sale proceeds has claimed to be received, therefore the AO asked the Assessee to give the explanation and the details and identity of the party i.e. M/s Richie Enterprises and how the Assessee came to know that party and how the sale was arranged, proof of transportation details, whether any clearance was taken by RBI or any other agency. The Assessee failed to provide any such details, therefore, the AO also considered the said transaction of Rs. 13,00,000/- as bogus sale transaction and added back in the income of the Assessee.

The AO by perusing the financial records of the Assessee also observed that the Assessee has also claimed depreciation of Rs. 7,53,201/- on the Arrie Camera Lenses . The AO ultimately by considering the claim of the depreciation as non-genuine, disallowed the same and added back to the total income of the Assessee.

3. The Assessee being aggrieved challenged the said additions before the Ld. Commissioner on merit and also on legal aspects and mainly claimed that the AO has served an unsigned copy of the Assessment Order upon the Assessee, **secondly** the AO had dispatched the unsigned assessment order on 08.04.2015 i.e. beyond the due date for completion and dispatching the assessment order (31.03.2015) and the same was received by the Assessee-company

only on 09.04.2015 and therefore the said assessment is time barred and bad-in-law and requires to be quashed.

4. The Ld. Commissioner not only dismissed the legal/technical ground raised by the Assessee but also affirmed the addition made by the AO, on merit by dismissing the grounds on merit.

5. First I will adjudicate the legal ground pertains to not passing the assessment order within the prescribed period of time which in this case was 31.03.2015. The Ld. AR claimed that as per the provisions of section 153(2) of the Act, no order of assessment, re-assessment or re-computation shall be made under section 147 of the Act after the expiry of 12 months from the end of the Financial Year in which notice under section 148 of the Act was served. In the instant case, admittedly the time limit for passing of order/due date for completion and dispatching of the assessment order was 31.03.2015, however, as per envelope in which the assessment order was sent to the Assessee and track report of the Speed-Post No. EM196662641IN, the said letter was booked by the postal authority at 10.18 am on 08.04.2015 and was served to the Assessee only on 09.04.2015, which goes to show that the assessment order was not passed before 08.04.2015 or upto 31.03.2015, hence, the same is liable to be quashed.

5.1 On the contrary, the Ld. DR refuted the claim of the Assessee and submitted that in the first paragraph of the impugned order, the assessment order stated to be passed on dated 27.03.2015 by the ITO, Ward-16(1)(5) and immediately thereafter handed over to the postal authorities for sending to the Assessee, however, inadvertently the same was booked for speed post on 08.04.2015. Generally the

orders passed on the last date i.e. 31.03.2015 or prior to that, handed over in bulk to the postal department and therefore, goes out from the custody of the particular AO and thus it can be presumed that assessment order was passed and dispatched within the prescribed due date and consequently claim made by the Assessee on this aspect is un-sustainable.

6. I have given thoughtful consideration to the peculiar facts and circumstances, as it appears from the impugned order that assessment order was passed on 27.03.2015, however, it is a fact that as per postal department booking of Speed-Post No. EM196662641IN the item/letter as claimed to have dispatched the assessment order, infact was booked on 08.04.2015 (10:18 am) and same was shown as delivered on 09.04.2015 (14:43). The Revenue-Department failed to bring on record any substantive evidence to establish the fact that after passing the assessment order on 27.03.2015, the same was not in the possession and/or control of the AO and was dispatched to the Assessee on or before 31.03.2015. There is a huge gap between the date of passing the assessment order i.e. 27.03.2015 and the date of dispatch i.e. 08.04.2015 which create suspicion and dents the veracity of the Assessment order; hence, I deem it appropriate to quash the assessment order itself, thus ordered accordingly. As I have quashed the assessment order itself, hence, not dwelling into other grounds raised by the Assessee as the adjudication of the same would prove futile exercise.

7. In the result, appeal filed by the Assessee stands allowed.

Orders pronounced in the open court on 26-09-2023.

Sd/-
(N. K. CHOUDHRY)
Judicial Member

SK, Sr.PS.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai

Sr. No.	Details	Date	Initial	Designation
1	Draft dictated on (dictation sheets are attached with main file	18.09.23		Sr.PS/PS
2	Draft dictated on PC			Sr.PS/PS
3	Draft Placed before author	20.09.23		Sr.PS/PS
4	Draft proposed & placed before the Second Member			JM/AM
5	Draft discussed/approved by Second Member			JM/AM
6	Approved Draft comes to the Sr.PS/PS			Sr.PS/PS
7	Order pronouncement on			Sr.PS/PS
8	File sent to the Bench Clerk			Sr.PS/PS
9	Date on which the file goes to the Head clerk			
10	Date on which file goes to the AR			
11	Date of Dispatch of order			