

IN THE INCOME TAX APPELLATE TRIBUNAL

"D" BENCH, MUMBAI

BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.2179/Mum./2023

(Assessment Year : 2016-17)

Mundhra Container Freight Station Pvt. Ltd.

E-104, Remibiz Court, Plot no.9

Shah Industrial Estate, Off. Veera Desai Road

Andheri (West), Mumbai 400 053

PAN - AADCM6822E

..... Appellant

v/s

Asstt. Commissioner of Income Tax

Circle-10(2)(2), Mumbai

.....
Respondent

Assessee by : Ms. Mitali Parekh

Revenue by : Smt. Mahita Nair

Date of Hearing - 19/10/2023

Date of Order - 20/10/2023

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 02/05/2023, passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, [*learned CIT(A)*], for the assessment year 2016-17.

2. In its appeal, the assessee has raised the following grounds:-

"Following grounds of appeal are without prejudice to each other:

1. The Ld. CIT(A) has erred in law and in facts in confirming the additions made by the Ld. A.O. without appreciating the submissions and evidences filed by the appellant and granting an opportunity of personal hearing.

2. The Ld. CIT(A) has erred in law and in facts in confirming the addition made by the Ld. A.O. of Rs. 43,13,700/- on the basis of difference in TDS as per return of income and as per Form 26AS of the year.

3. The Ld. CIT(A) has erred in law and in facts in confirming the disallowance made by the Ld. A.O. of Rs. 33.17,400/- on account of repair and maintenance expenses claimed by the appellant during the year.

4. The Ld. CIT(A) has erred in law and in facts in not providing any finding on the action of the Ld. A.O. of incorrectly computing tax demand by considering total income at Rs. 1,86,44,200/- instead of Rs. 1,85,45,563/-.

5. The appellant craves leave to add to, alter, amend and/or delete in all the foregoing grounds of appeal."

2. The brief facts of the case as emanating from the record are: The assessee is a company engaged in the business of container freight service. For the year under consideration, the assessee filed its return of income on 30/09/2016, declaring a total income of Rs.1,09,14,460. The return filed by the assessee was selected for scrutiny and statutory notices under section 143(2) as well as section 142(1) were issued and served on the assessee. During the assessment proceedings, Form no.26AS details pertaining to the assessee were retrieved from the computer database and the same are provided to the assessee. The assessee was asked to furnish the reconciliation of transactions mentioned in Form no.26AS vis-à-vis its books of accounts along with reasons explaining the variation if any with supporting documentary evidence. The assessee was also asked to provide a party-wise reconciliation of Form no.26AS with the profit and loss account. In response thereto, the assessee filed the details of undisclosed TDS of Rs.43,127. The assessee further submitted that it has shown more sales than that as per Form no.26AS. The Assessing Officer ("AO") vide order dated 14/12/2018, passed under section 143(3) of the Act did not agree with the submissions of the assessee and held that from the excess receipts/sales booked by the

assessee compared to the sales as per TDS reveals that the assessee has two components of sales: (a) sales competent where TDS is made by sales parties, and (b) sales component without any TDS implication. In the absence of any working of the TDS mismatch, the AO made an addition of Rs.43,13,700 and added the same to the total income of the assessee. Further, during the assessment proceedings, upon perusal of the profit and loss account, it was observed that the assessee has shown "*repair and maintenance*" of Rs.3,22,78,657, under the head "*other expenses*". In response to notice under section 142(1) of the Act, the assessee submitted partywise details of such expenses. In order to verify the genuineness of the assessee's claim of expenses, notices under section 133(6) of the Act were issued to three parties seeking details of transactions made by them with the assessee, ledger accounts, and other supporting documents. The notice issued to one party was returned unserved by the postal authority with the remark "*not known*", while the notices were served to the other two parties, however, no reply was received except one party confirmed the ledger of the assessee. Accordingly, the assessee was asked to show cause as to why the expenses booked in the name of two parties, who had not responded, be not disallowed and added to the total income of the assessee. The AO vide order passed in section 143(3) of the Act did not agree with the submissions of the assessee and held that in order to justify its claim of the genuineness of such expenses, the assessee should have produced the parties along with supporting documents as sought in the notices issued under section 133(6) of the Act. Accordingly, repair and maintenance expenses to the tune of Rs.33,17,400 booked in the name of the parties who did not respond were disallowed and added to the total income of the assessee.

3. In the appeal before the learned CIT(A), despite various notices being issued, no reply/submission was filed on behalf of the assessee. Accordingly, vide impugned ex-parte order dated 02/05/2023, the learned CIT(A) dismissed the appeal filed by the assessee on the basis of material available on record. Being aggrieved, the assessee is in appeal before us.

4. We have considered the rival submissions and perused the material available on record. It is evident that the learned CIT(A) has passed the order ex-parte due to the non-appearance of/on behalf of the assessee. During the hearing, the learned Authorised Representative ("*learned AR*") submitted that vide the last notice issued by the learned CIT(A) on 24/04/2023, time was granted to the assessee to file the submissions on or before 01/05/2023. However, due to a delay in the collation of the necessary documents in support of its claim, the assessee could file the submission only next date, i.e. 02/05/2023. In this regard, the learned AR referred to the written submissions filed before the learned CIT(A) along with the acknowledgement of filing, which forms part of the paper book. The learned AR further submitted that the learned CIT(A) on the very same date passed the impugned ex-parte order dismissing the appeal filed by the assessee. Accordingly, the learned AR prayed that the appeal be restored to the file of the learned CIT(A) for *de novo* adjudication in view of the submissions filed by the assessee. On the contrary, the learned Departmental Representative vehemently relied upon the orders passed by the lower authorities and submitted that the assessee failed to file the submissions despite multiple opportunities being granted by the learned CIT(A) and thus now no further opportunity be granted to the assessee.

5. From the record, it is evident that the assessee failed to comply with all the notices issued by the learned CIT(A), however, filed its submissions only after the expiry of time granted by the learned CIT(A). Further, now in appeal before us, the assessee is duly represented by the learned AR and wishes to pursue the litigation against the additions made by the AO. In view of the above, we are of the considered opinion that in the interest of justice, the assessee be hereby granted one more opportunity to represent its case on merits before the learned CIT(A). Consequently, we deem it fit and proper to restore the matter to the file of the learned CIT(A) for *de novo* adjudication of the appeal on merits after consideration of all the details/submissions as were filed by the assessee. Needless to mention no order shall be passed without affording reasonable opportunity of hearing to the parties. Further, the assessee is directed to appear before the learned CIT(A) on all the dates of hearing as may be fixed without any default. As the matter is being restored to the file of the learned CIT(A) for adjudication on merits, the other grievances raised by the assessee on merits do not call for adjudication at this stage. Accordingly, grounds raised by the assessee are allowed for statistical purposes.

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

Order pronounced in the open Court on 20/10/2023

Sd/-
OM PRAKASH KANT
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 20/10/2023

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Mumbai; and
- (5) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai