

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, MUMBAI**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA Nos.2082 & 2083/Mum/2023
(A.Ys. 2009-10 & 2010-11)**

Central Engineering Works, 1/701, Prathamesh Avenue, Dutta Mandir Road, East, Mumbai – 400097	Vs.	ITO 24(1)(4) Mumbai
स्थायी लेखा सं./जीआइआर सं./ PAN/GIR No:AAAF0783A		
Appellant	..	Respondent

Appellant by :	TejasSodha
Respondent by :	Ajeya Kumar Ojha

Date of Hearing	17.10.2023
Date of Pronouncement	23.10.2023

आदेश / ORDER

Per Bench:

Both these appeals filed by the assessee are directed against the different order of NFAC for assessment year 2009-10 and AY. 2010-11. Since, common issue on identical facts are involved in these two cases, therefore, for the sake of convenience both these appeals are adjudicated together by taking ITA No. 2082/Mum/2023 as a lead case and its finding will be applied mutatis mutandis to the other appeal wherever it is applicable.

ITA No.2082/Mum/2023

- “1. *The learned Commissioner of Income Tax (Appeals) erred in law & fact by making additions of Rs.29,79,272/- u/s 69C of the Income Tax Act, 1961 on account of bogus purchase & 10% adhoc disallowance of Rs.7,56,006/- which were claimed as expenses by the appellant.*
2. *The learned Commissioner of Income Tax (Appeals) erred in law and fact by making the aforesaid additions on the misconception that the appellant has not complied with the notice issued u/s 250 of the Income Tax Act, 1961.*
 - 2.1 *The appellant has made submission in regards to the grounds raised at the time of filing of appeal before the learned Commissioner of Income Tax (Appeals) in order to substantiate its claim. A notice u/s 250 of the Income Tax Act, 1961 was issued upon the appellant on 14 March 2023 and the due date of filing of response for the said notice was 21 March,2023. The appellant has made submissions in response to the said notice on 20th March, 2023 The appellant also received an online acknowledgement bearing Acknowledgement number: 987408391200323 on 20th March, 2023 of the same date as that of the submission.*
 - 2.2. *The appellant had requested for admission of additional evidence under Rule 46A of the Income Tax Rules, 1961. Submissions of additional evidences were also made on 20th opted for The said submissions were made by the appellant on 20th March, 2023 & received an online acknowledgement bearing Acknowledgement number: 987328211200323 on 20th March.2023 of thesame date as that of the submission.*
 - 2.3. *The appellant has complied with the notice and accordingly made submissions in order to substantiate the grounds of appeal presented before the learned Commissioner of Income Tax (Appeals). Further such submissions were made within the time limit provided in the notice issued.*
3. *The learned Commissioner of Income Tax (Appeals) erred in law and fact by overlooking the fact that the appellant has infact provided for the explanations. documentations and additional evidences to substantiate its claim in respect to the additions made by the assessing officer at the time of passing the order u/s 144 r.w.s 147 of the Income Tax Act, 1961.*
4. *The appellant prays that since the appellant's perspective was not considered at the time of making of additions made amounting to Rs. 29,79,272/- u/s 69C of the Income Tax Act,1961 on account of bogus purchase & 10% adhoc disallowance of Rs.7,56,006/- which were claimed as expenses by the appellant, the first appellant proceedings be reinstated & submissions made by the appellant before the first appellate authority be considered before passing the order.*

5. Without Prejudice to the above,

In respect to the disallowance of 100% disallowance of purchase expenses the appellant states that even though the purchases were from alleged parties,

gross profit should have been considered for addition at 23.36% i.e Rs.6,95,958/- (23.36% of Rs. 29,79,272/-) instead of 100% i.e Rs.29,79,272/- because the goods were consumed and sold within AY 2009-10 in which Gross Profit ratio is 23.36%.

6. *The appellant craves leave to add, amend, alter and/ or withdraw the aforesaid ground of appeal.”*

2. Fact in brief is that return of income declaring total income of Rs.nil was filed on 21.09.2009. Subsequently, information was received from Sale Tax Department that assessee has obtained the accommodation entries of bogus expenditure from various parties. The case of the assessee was reopened by issuing of notice u/s 148 of the Act on 31.03.2016. During the course of assessment the AO stated that as per the information received the assessee has obtained accommodation entries during the year under consideration from the following parties as follows:

Sr. No.	Name of the bill provider	Tin No.	Amount
1.	Pioneer Trading Corporation Shivraj Traders	27430617262V	413,917
2.	Nisha Enterprise	27940256772V	500,690
3.	J.B. Interlink	27800298365V	355,191
4.	V.M. Udyog	27820645517V	106,702
5.	Payal Enterprises	27870658730V	197,454
6.	V3 Enterprises	7860613194V	248,777
7.	Sun Enterprises	27580551753V	190,176
8.	Classic Enterprises	27130343596V	966,365

The AO stated that during the course of assessment inspite of issuing a number of notices assessee has not made any compliance, therefore, assessment was finalised u/s 144 of the Ac ex-parte. The assessing officer has treated the 100% bogus purchases of Rs.29,79,272/- as unexplained expenditure u/s 69C of the Act and added to the total income of the assessee. The AO has also added 10% of the expenses for want of verification to the amount of Rs.7,56,006/- to the total income of the assessee.

3. The assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal that the assessee holding that assessee has failed to make any compliance during the course of appellate proceedings.

4. During the course of appellate proceedings before us the ld. Counsel filed paper book comprising copies of document submitted before the ld. CIT(A) as additional evidences under Rule 46A vide letter dated 20.03.2023. The ld. Counsel also referred page no. 67 of the paper book showing the e-acknowledgement no. 987105751 dated 20.03.2023 vide which in response to notice issued by the ld. CIT(A) the assessee has filed 8 attachments of documents for admitting as additional evidences under Rule 46A of the Act. However, without considering the submission made by the assessee dated 20.03.2023 the ld. CIT(A) has passed the order u/s 250 of the Act on 30.03.2023 and dismissed the appeal of the assessee.

On the other hand, the ld. D.R supported the order of the lower authorities.

5. Heard both the sides and perused the material on record. Without reiterating the facts as elaborated above it is evident from the copy of e-acknowledgment filed by the assessee as referred above that assessee has made compliance during the course of appellate proceedings before the ld. CIT(A) and submitted various document as additional evidences under Rule 46A for deciding the appeal of the assessee on merit. However, the ld. CIT(A) has simply dismissed the appeal of the assessee holding that assessee has not made any compliance during the course of assessment proceedings. The ld. Counsel has demonstrated from the relevant material as discussed above that ld. CIT(A) has not decided the issue in appeal on merit after considering the submission of the assessee made online on

20.03.2023. The case of the assessee was decided ex-parte both at the level of the assessing officer and the CIT(A). Normally, whenever any irregularity crept in the proceedings then after removing the irregularity proceedings is to be initiated from that stage by remitting the issue to the Id. appellate authority. We would be multiplying the litigation, because the Id. CIT(A) would call for remand report from the AO and proceedings would commence on two stages, therefore, in order to avoid that situation we would deem it proper to set aside the order of the AO. The assessing officer is directed to decide the issue afresh after verification of the relevant material submitted by the assessee after providing adequate opportunity. The assessee is also directed to make compliance before the AO without any failure.

ITA No.2083/Mum/2023

6. Since the facts and the issue involved in this ground of appeal is similar to the facts and issue involved in the appeal vide ITA No. 2082/Mum/2023 as adjudicated supra in this order, therefore, applying the finding of ITA No. 2082/Mum/2023 as mutatis mutandis this ground of appeal of the assessee are also allowed.

7. In the result, the appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 23.10.2023

Sd/-
(Kuldip Singh)
Judicial Member

Sd/-
(Amarjit Singh)
Accountant Member

Place: Mumbai
Date 23.10.2023
Rohit: PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.