

| आयकर अपीलिय अधिकरण न्यायपीठ, कोलकाता |
IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, KOLKATA

BEFORE SHRI SANJAY GARG, HON'BLE JUDICIAL MEMBER
&
DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER

I.T.A. No. 31/Kol/2023
Assessment Year: 2013-14

M/s. Colour Realtors Private Limited 85, Bentick Street 5 th Floor Kolkata - 700001 [PAN : AADCC9668G]	Vs	Income Tax Officer, Ward- 2(2), Kolkata
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri K.M. Roy, A/R
Revenue by :	Shri S. Datta, CIT D/R

सुनवाई की तारीख/Date of Hearing : 06/09/2023
घोषणा की तारीख /Date of Pronouncement: 15/11/2023

आदेश/ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER :

The present appeal is directed at the instance of the assessee against the order of the National Faceless Appeal Centre, Delhi (hereinafter the "Id. CIT(A)") dt. 16/11/2022, passed u/s 250 of the Income Tax Act, 1961 ("the Act") for the Assessment Year 2013-14.

2. The assessee has raised the following grounds of appeal:-

"1. For that the order of the Ld CIT(A) is unjustified and bad in law as Ld CIT(A) has failed to fulfil its statutory obligations by not considering the facts and merits of the case while disposing off the appeal.

2. For that the Ld CIT(A) has erred in passing the Order without giving any opportunity to the assessee for making its submission and also failed to serve the notices on the assessee since no intimation of the notices was sent to assessee over e-mail or SMS.

3. For that Ld. AO erred in treating the genuine purchases of the assessee as bogus and making addition of Rs. 49,26,85,000 as bogus purchase u/s 68.

For that Ld. AO erred in treating the amount of Sundry Creditors of Rs. 14,16,17,433 as unexplained Cash Credit u/s 68.

4. For that Ld. AO erred in invoking the provisions of Section 14A read with Rule 8D of the Income Tax Act, 1961 and in disallowing an amount of Rs. 22,150.

5. For that the Appellant craves leaves to add, alter or amend any ground before or at the time of hearing."

3. We observe that this appeal came up for hearing in the past on 07/03/2023 and this Tribunal observed that though the impugned order is an *ex-parte* order, the assessee is required to submit necessary evidence and to demonstrate the fact that it is not a shell company. The relevant observation of this Tribunal in the order sheet dt. 07/03/2023, reads as follows:-

"The assessee is in appeal before the Tribunal against the order of ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 16.11.2022 passed for A.Y. 2013-14.

2. The assessee has taken six grounds of appeal, namely-

(1) For that order of the ld. CIT(A) is unjustified and bad in law as ld. CIT(A) has failed to fulfill its statutory obligations by not considering the facts and merits of the case while disposing of the appeal.

(2) For that the ld. CIT(A) has erred in passing the order without giving any opportunity to the assessee for making its submission and also failed to serve the notices on the assessee since no intimation of the notices was sent to the assessee over e-mail or SMS.

(3) For that ld. AO erred in treating the genuine purchases of the assessee as bogus and making addition of Rs.49,26,85,000/- as bogus purchase u/s. 68.

(4) For that ld. AO erred in treating the amount of sundry creditors of Rs.14,16,17,433/- as unexplained cash credit u/s 68.

(5) For that ld. AO erred in invoking the provisions of section 14A read with Rule 8D of the Income Tax Act, 1961 and in disallowing an amount of Rs.22,150/-.

(6) For that the appellant craves leaves to add, alter or amend any ground before or at the time of hearing.

*3. The ld. Counsel for the assessee, at the very outset, submitted that the impugned order is an *ex-parte* order and a non-speaking order. The ld. CIT(Appeals) has dismissed the appeal of the assessee for want of prosecution, which is in contravention of clause (6) of section 250.*

4. With the assistance of both the parties, we find that the assessee has filed its return of income on 30.09.2013 disclosing total income of Rs.74,920/-. Its case was selected for scrutiny assessment and a notice under section 143(2) was issued and served upon the assessee. On scrutiny of the accounts, it revealed that this assessee has made huge purchases from various Companies. The ld. Assessing Officer summarized those purchases on page 2 of the assessment order and issued them notices under section 133(6) of the Income Tax Act. Similarly he issued notice under section 142(1) of the Income Tax Act. The ld. Assessing Officer has reproduced all the notices and outcome

of all the inquiries by him but the assessee did not cooperate with the ld. Assessing Officer. Hence he made an addition of Rs.49,26,85,000/- on account of bogus purchases.

5. There is no dispute that the impugned order is an ex-parte order and ld. CIT(Appeals) has not adjudicated the issues on merit as contemplated in sub-clause (6) of section 250 but instead of simply setting aside it to the file of the ld. 1st Appellate Authority for re-adjudication, we deem it appropriate that assessee should submit the necessary evidence, if any, filed before the ld. 1st Appellate Authority and if not filed, then with a prayer to lead additional evidence. Once pleadings are completed, then the Tribunal would like to either call for a remand report from the ld. Assessing Officer or would explore whether assessee has any prima facie case, which required re-adjudication at the level of the ld. 1st Appellate Authority or of the ld. Assessing Officer. Therefore, in order to enable the assessee to submit necessary evidences and demonstrating the fact that it is not a shell company, opportunity is being given. Hearing is adjourned to 16th May, 2023, prior to that assessee would submit the necessary details."

4. Thereafter, the case was adjourned on 16/05/2023 and 08/06/2023 and finally was heard today. The ld. Counsel for the assessee referring to the documents placed in the form of a paper book submitted that the immediately preceding assessment year i.e., Assessment Year 2012-13 which was subject to scrutiny proceedings u/s 143(3) of the Act and similar type of transactions have been carried out and finally the income has been assessed at Rs.11,36,403/- as against the income declared at Rs.10,36,509/- and certain disallowances u/s 40(a)(ia) of the Act and u/s 14A of the Act has been made. Reference was also made to the audited financial statements in order to contend that the assessee company is not a shell company and regularly engaged in the business activity and also been assessed in the past u/s 143(3) of the Act. He, thus prayed that since the impugned order is *ex-parte*, one more opportunity be granted to appear before the ld. CIT(A) since no discussion has been made on the merits of the case.

4.1. On the other hand, the ld. D/R opposed the contentions made by the ld. Counsel for the assessee stating that against the huge turnover of Rs.49.30 Crores, assessee has merely offered income of

Rs.74,921/- and this is a typical case of accommodation entry provider company.

5. We have heard rival contentions and perused the material placed on record. The prayer of the assessee is that the order of the Id. CIT(A) is an *ex-parte* order and the assessee did not get fair opportunity to plead its case and to file various evidence and, therefore, one more opportunity may be granted and the issues may be restored to the Id. CIT(A) for necessary adjudication. We notice that the assessee company has passed through scrutiny proceedings for the immediately preceding Assessment Year i.e., Assessment Year 2012-13 and vide order dt. 21/03/2015, the assessment has been framed making certain additions. So, the existence of the company is not in doubt. We also observe that in the preceding financial year, the turnover was Rs.24.18 Crores and purchases were Rs.24.15 Crores and in the assessment order u/s 143(3) of the Act for Assessment Year 2012-13, no additions have been made towards bogus purchases. In other words, the purchases disclosed by the assessee has been accepted. So far as the year under appeal is concerned, against the purchases of Rs.49.26 Crores, the sales are at Rs.49.31 Crores. We also observe that the Id. Assessing Officer apart from making addition for bogus purchases have also made additions for unexplained cash credits. There is complete silence about the details of any such unsecured loans taken during the year as discernible from the audited financial statements.

6. Considering these facts of the case and also observing that the Id. CIT(A) has dismissed the assessee's appeal *in limine* for non-

appearance without making adjudication on merits of the case and that there is no whisper about any of the issues raised in the grounds of appeal, we thus, deem it fit and proper to restore the issues raised on merits regarding addition for bogus purchases and unsecured cash credit to Id. CIT(A) for necessary adjudication which needs to be carried out after providing sufficient opportunity to the assessee to file various details and then to decide in accordance with law by passing a speaking order. Further if felt necessary, the Id. CIT(A) may call for a remand report from the Assessing Officer if certain additional evidence are filed.

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

Order pronounced in the Court on 15th November, 2023 at Kolkata.

Sd/-
(SANJAY GARG)
JUDICIAL MEMBER

Sd/-
(DR. MANISH BORAD)
ACCOUNTANT MEMBER

Kolkata, Dated 15/11/2023

SP SP

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

1. अपीलार्थी / The Assessee
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,
 TRUE COPY

Assistant Registrar
 आयकर अपीलीय अधिकरण
 ITAT, Kolkata