

IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, MUMBAI
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 2113 & 2114/Mum/2023
(A.Y: 2016-17 & 2017-18)

Vasani Enterprises, B-101, Bingo Plaza No.2, Manpada Road, Shrikhande Wadi, Dombivli (E), Thane-421201, Maharashtra.	Vs.	ACIT, Circle -2 Rani Mansion, Murbad Road, Kalyan (W), Kalyan-421306, Maharashtra.
PAN/GIR No. : AAAFV8928N		
Appellant	..	Respondent

Assessee by :	Shri. Shriram Bajaj.AR
Revenue by :	Shri G.V. Ninawe, Sr. DR

Date of Hearing	30.10.2023
Date of Pronouncement	31.10.2023

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

The two appeals are filed by the assessee against the separate orders of the National Faceless Appeal Centre(NFAC) Delhi / CIT(A) passed u/sec 143(3) and U/sec 250 of the Ac.

2. Since the issues involved in these appeals are common and interlinked, hence are clubbed, heard and a consolidated order is passed, for the sake of convenience,

shall take up the ITA No. 2113/Mum/2023 for the A.Y 2016-17 as a lead case and the facts narrated. The assessee has raised the following grounds of appeal:

Being aggrieved by the order dated 08.05.2023 passed by the Learned Commissioner of Income Tax (Appeals) National Faceless Appeal Centre, Delhi["Ld. C.L.T(A)"] u/s 250 of the Income-tax Act 1961 ("Act"), your appellant prefers this appeal, among others, on the following grounds of appeal, each of which is without prejudice to, and independent of, the other:

1 Dismissal of the appeal without giving opportunity of being heard-

On the facts and in the circumstances of the case, and also in law, the Ld C.I.T(A) erred in passing ex-parte order without giving proper opportunity of being heard to the appellant Your appellant, therefore, prays that order passed by the Ld C.I.T(A) be set aside and appeal may be restored before the Ld C.I.T(A) for fresh hearing

2. Addition on account of ad-hoc disallowance out of wages payment of Rs.4,61,760/-

On the facts and in the circumstances of the case, and also in law, the Ld C.I.T.(A) erred in confirming the addition of Rs,4,61,760/-, being 10% of the total wages paid, made by the Ld AO. The Ld. AO did not did not point out any specific deficiency in the evidence submitted in the course of assessment proceedings. Your appellant, therefore, prays that ad-hoc disallowance made be deleted.

3. Addition on account of disallowance of Rs.3,07,744/- u/s 40(a)(ia)

- 3 -

On the facts and in the circumstances of the case, and also in law, the Ld C.I.T.(A) erred in confirming the disallowance of Rs.3,04,744/-, out of total disallowance of Rs.8,75,161/- u/s 40(a)(ia) being 30% of the contract payments of Rs.10,15,813/- allegedly for non payment of the Tax Deducted at Source there from, before the due date specified for filing the return of income u/s 139(1)Your appellant submits that the payment of the tax deducted at source from contract payments was made within the due date specified u/s 139(1). Your appellant, therefore, prays that the disallowance made as above be deleted.

4. *Addition on account of disallowance of unpaid TDS of Rs.5,34,874/- u/s 43B(a).*

On the facts and in the circumstances of the case, and also in law, the Ld C.I.T(A) erred in confirming the disallowance of Rs.5,34,874/- u/s 43B of the Act, being unpaid Tax deducted at Source as at year end, allegedly for non-payment thereof on or before the due date specified for filing the return of income u/s 139(1) of the Act. Your appellant submits that the sum of Tax deducted at source is not covered by the provisions of section 43B(a) and hence, can't be a subject matter of disallowance. Your appellant, therefore, submit that the disallowance made as above is erroneous, unjustified and illegal and prays that same be deleted.

Your appellant craves leave to alter, modify, amend or delete any of the above grounds of Deal, or to add one or more new ground(s), as may be necessary.

3. The brief facts of the case are that, the assessee is engaged in the business of civil contract works. The assessee has filed the return of income for the A.Y 2016-17 on 06.02.2018 disclosing a total income of Rs. 27,14,740/-

and the return of income was processed u/s 143(1) of the Act. Subsequently the case was selected for complete scrutiny under the CASS and notice u/sec 143(2) and U/sec 142(1) of the Act along with the questionnaire are issued. In compliance to the notice, the Ld. AR of the assessee appeared from time to time and submitted the details, financial statements in support of the return of income filed. The Assessing Officer (AO) on perusal of the financial statements found that the assessee is following the percentage of work completion method and the A.O has dealt on the facts with respect to the work-in-progress and closing stock. Whereas on verification of the profit and loss account, the A.O found that(i) the assessee has debited wages and labour charges of Rs. 46,17,600/- and as per the wage register some of the signatures are not properly recorded and the assessee was called to explain the reasons and there was no clarity on the issue. Therefore the AO has estimated the disallowance @ 10% of the expenses which worked out to Rs.4,61,760/-. (ii) Similarly the AO on perusal of the payments made to contractor of Rs.10,15,813/- found that the assessee has not deducted TDS on contract amount and (iii) further the AO on examination of the profit and loss account found

that the assessee has paid interest of Rs.19,01,389/- on the loans borrowed and the assessee was asked to submit the details of the interest paid along with the TDS. The assessee has filed the chart explaining the details showing the details of payments of interest on loans. The AO on verification of details found that the assessee has failed to deposit the TDS amount to the government account before due date of filing the return of income U/sec139(1) of the Act and the A.O has invoked the provisions under section 40(a)(ia) of the Act and made disallowance @ 30% of the expenses claimed on account of interest on loans & payment to contractor which worked out to Rs. 8,75,161/-. (iv) The last disputed issue the AO found that the assessee has not submitted the supporting documents of TDS deposits of Rs.5,34,874/- and applied the provisions U/sec43B of the Act and made addition. Finally the A.O has assessed the total income of Rs.45,86,540/- and passed the order u/s 143(3) of the Act dated 22.12.2018.

4. Aggrieved by the order, the assessee has filed an appeal before the CIT(A), whereas the CIT(A) has considered the grounds of appeal, statement of facts and findings of the AO and has issued notices of hearing and since there was no compliance by the assessee to notices. Therefore the

CIT(A) considering the information on record has confirmed the action of the A.O and dismissed the appeal. Aggrieved by the order of the CIT(A), the assessee has filed an appeal before the Hon'ble Tribunal.

5. At the time of hearing, the Ld. AR submitted that the CIT(A) has erred in confirming the action of the Assessing officer overlooking the submissions made in the assessment proceedings. The CIT(A) has sent notices to old email account, which is not in use and hence no communication is received by the assessee and the non appearance before the appellate authority is not an wanton act but the circumstances explained. Further the assessee has a good case on merits and shall substantiate with the material evidences and prayed for an opportunity to explain before the lower authorities. Contra, the Ld. DR supported the order of the CIT(A).

6. Heard the rival submissions and perused the material on record. Prima-facie the CIT(A) has passed the order considering the fact that there is no appearance in spite of providing adequate opportunity of hearing and the notices were issued. Therefore, the CIT(A) was of the opinion that the assessee is not interested in prosecuting the appeal and

dismissed the appeal ex-parte confirming the action of the assessing officer. The Ld. CIT(A) has issued the notices of hearing on 18-09-2021,22-01-2021,14-12-2021,12-03-2022,12-05-2022,27-04-2023 referred at Page 4 Para 3 of the order, but there was no response and thus the Ld.CIT(A) came to a conclusion that the assessee is not interested and decided the appeal based on the information available on record. The Ld.AR submitted that the CIT(A) has sent notice to old email account, which is not in use and the non appearance before the appellate authority is not an wanton act. Whereas the assessee has raised grounds of appeal challenging the additions of the A.O and there could be various reasons for non appearance which cannot be overruled. Therefore, considering the principles of natural justice shall provide with one more opportunity of hearing to the assessee to substantiate the case with evidences and information. Accordingly, set aside the order of the CIT(A) and remit the entire disputed issues to the file of the CIT(A) to adjudicate afresh and the assessee should be provided adequate opportunity of hearing and shall cooperate in submitting the information for early disposal of the appeal. Accordingly, allow the grounds of appeal of the assessee for statistical purposes.

- 8 -

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

ITA No. 2114/Mum/2023, A.Y 2017-18.

8. As the facts and circumstances in this appeal is identical to ITA No 2113/Mum/2023, for the A.Y 2016-17 and the decision rendered in above paragraphs would apply mutatis mutandis for this appeal also. Accordingly, restore the disputed issues to the file of the CIT(A) on similar directions and allow the grounds of appeal of the assessee for statistical purposes.

9. In the result, both the appeals filed by the assessee are allowed for statistical purposes.

Order pronounced in the open court on 31.10.2023.

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 31.10.2023

KRK, PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT (Judicial)
4. The PCIT

5. DR, ITAT, Mumbai
6. Guard File