

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "D" MUMBAI

BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI RAHUL CHAUDHARY (JUDICIAL MEMBER)

ITA Nos. 2686 & 2688/MUM/2023
Assessment Years: 2009-10 & 2013-14

Mudraa Holdings Pvt. Ltd.,
A/306 Bachubhai Building,
187 D N Road, Fort, Mumbai
G.P.O. Mumbai-400 001.

PAN No. AAECM 4498 H
Appellant

ITO, Ward 2(2)(3),
Aayakar Bhavan,
Mumbai-400002.

Vs.

Respondent

Assessee by : Ms. Ridhisha Jain
Revenue by : Mr. Rajendra Chandekar, DR

Date of Hearing : 14/11/2023
Date of pronouncement : 28/11/2023

ORDER

PER OM PRAKASH KANT, AM

These appeals by the assessee are directed against two separate orders both dated 29.05.2023 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment year 2009-10 and 2013-14 respectively.

2. At the outset, the Ld. Counsel for the assessee submitted that there was a delay of three days in filing both these appeals for the



reasons stated in the affidavit of the director of assessee company, relevant extract of which is reproduced as under :

a) That my accountant had received the order u/s 250 of the Act on the Income tax portal on 29/05/2023.

b) That my office staff went to file the appeal to the registrar on 28/07/2023 but he was asked to file the same online on e-filing portal.

c) Since 29/07/2023 & 30/07/2023 being Saturday and Sunday respectively, the offices were closed and hence the appeal could not be filed on these days. On 31/07/2023 being the next working day, the accountant tried to file the appeal online but was finding difficulty in doing the same. Therefore he again went to the registrar and requested him to kindly admit the appeal offline and the same was filed.

d) That the delay in filing the present appeal was due to reason beyond my control and I had no malafide intention to jeopardize the interest of the revenue.

2.1 The Ld. Counsel for the assessee prayed that delay in filing the appeal might be condoned in view of bona fide reasons. The Ld. Departmental Representative (DR) also did not seriously object for admission of the appeal.

3. We have heard rival submission of the parties on the issue of condonation of the delay in filing the appeal. We find that the delay of three days was due to difficulty in filing the appeal electronically and therefore, the appeal was filed physically on next working day. In view of the sufficient cause for not filing the appeal on time, the delay of three days in filing the appeal is condoned and the appeal is admitted for adjudication.



4. The grounds raised by the assessee for filing both the assessment years are identical and therefore, for brevity grounds for assessment year 2009-10 are reproduced as under:

1. *On facts and circumstances of the case and in law, the reassessment order passed u/s 143(3) r.w.s 147 dated 27/12/2016 is non-est and bad-in-law, since the said order had been passed beyond the limitation period specified u/s 153(2).*

2. *On the facts & in the circumstances of the case and in law the Hon'ble CIT (A) erred in passing an ex parte order without considering number of submission filed before the then jurisdictional CIT (A) & passing the order without providing sufficient opportunity to explain the facts of the case and the reasons assigned for doing so are wrong and contrary to the provisions of Income Tax and rules made thereunder.*

3. *On the facts & in the circumstances of the case and in law, the Hon'ble CIT (A) erred in not considering the submission made before the appellate authorities during pre-faceless period the copy of which was available with them and the reasons assigned for doing so are wrong and contrary to the provisions of Income Tax and rules made thereunder.*

4. *On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) erred in upholding Rs. 1,73,50,000/- made by the Ld AO to the returned income u/s. 68 of the IT Act 1961 by treating genuine loan as ingenuine and the reasons assigned for doing so are wrong and contrary to the Provisions of Income Tax Act and rules made there under.*

5. *On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) erred in upholding an addition of Rs.72,02, 187/- to the returned income u/s. 69C of the IT Act 1961 on account of unexplained expenses and the reasons assigned for doing so are wrong and contrary to the Provisions of Income Tax Act and rules made there under.*

5. *On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) erred in upholding an addition of Rs. 14,36,232/- to the returned income on account of commission expense by alleging the failure to produce correspondence and establish the nexus between the export's orders received and the commission paid and the reasons assigned for doing so are wrong and contrary to the Provisions of Income Tax Act and rules made there under.*

6. *On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) erred in upholding the penalty initiated by the Ld. AO u/s. 271(1)(C) of the IT Act 1961 and the reason assigned for doing*



so are wrong and contrary to the provision of Income Tax Act and rules made there under.”

5. We have heard rival submission of the parties and perused the relevant material on record. We find that the Ld. CIT(A) has passed ex-parte order and dismissed the appeals in default for non-compliance of the notice issued by the Ld. CIT(A).

5.1 Before us, the Ld. Counsel for the assessee submitted that all the submissions were filed before the Commissioner (Appeals) in the physical hearing, however after transfer of the appeal to the faceless, the assessee could not respond to the notices as he was under impression that all the submissions had already filed before the Ld. CIT(A). We find that the Ld. CIT(A) under provision of section 250(6) of the Act is required to pass order on merit of the grounds raised even no representation on the part of the assessee, but he has not decided the appeal on merit and merely dismissed in default on the part of assessee in not complying the notices. Therefore, in the facts and circumstances of the case we feel it appropriate to restore these appeals to the file of the Ld. CIT(A) for deciding afresh and pass a reasoned order on merit after taking into consideration submission of the assessee. The ground No. 1 and 2 of the appeal of the assessee for both the assessment years are allowed whereas the remaining grounds are not required to be adjudicated upon.



6. In the result, both the appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open Court on 28/11/2023.

Sd/-
(RAHUL CHAUDHARY)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai;

Dated: 28/11/2023

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai