

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “SMC”: NEW DELHI**

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No. 2821/DEL/2023
Assessment Year: 2009-10

Income-tax Officer, Ward-21(1), New Delhi.	<u>Vs</u>	Ratroi Maa Trading P. Ltd., M-98, 2 nd Floor, Jagat Ram Park, Laxmi Nagar, Delhi-110092. PAN- AAECR0612A
APPELLANT		RESPONDENT
Assessee by	None	
Department by	Sh. Om Parkash, Sr. DR	
Date of hearing	12.12.2023	
Date of pronouncement	12.12.2023	

ORDER

PER KUL BHARAT, JM:

This appeal was filed by the Revenue. However, a letter dated 04.12.2023 has been filed by the AO. The relevant contents of the letter are reproduced as under:

*“To
The Asstt. Registrar,
Income Tax Appellate Tribunal,
Bench-A, Lok Nayak Bhawan,
New Delhi.*

Sir/Madam.

Sub: Filing of Miscellaneous Application in the case of M/s Ratroi Maa Trading Pvt. Ltd., for A.Y. 2009-10, PAN: AAECR0612A against order in

*ITA No. 7489 / D * el / 2018 dated 13.06.2023 passed by Hon'ble ITAT, A-Bench, Delhi – reg*

Kindly refer to the above mentioned subject.

*In this case, Appeal was filled by the assessee against the order of the worthy CIT(A) appeal no. 328/17-18 dated 28.09.2018 and the Hon'ble ITAT vide its order in this case vide appeal no. ITA No. 7489 / D * el / 2018 dated 13.06.2023 has now partly allowed the appeal of the assessee by stating that reasonable opportunity of being heard was not provided by CIT(A) and therefore the enhancement made by the CIT(A) is unsustainable in law. The order of the Hon'ble Tribunal has been received on 20.06.2023 by the CIT(Judicial).*

Facts of the case:

In this case, the assessee company filed its return of income on 31.03.2010 declaring an income of Rs. 1,38,840/-, Thereafter, STR was received from the Investigation Wing stating that the assessee's bank account reflects huge credits of Rs. 3.69,55,260/-. Thereafter, notice u/s 148 was issued on 30.06.2016. The assessment was completed vide order u/s 147/143(3) dated 21.12.2016. The assessee failed to submit any detail regarding sale and purchase. The AO adopted the peak balance theory and made an addition of Rs. 42,10,200/- as unexplained investment for peak investment in bank accounts. Aggrieved by the order u/s 143(3) the assessee filed appeal before the Ld. CIT (Appeals).

Appeal before LD. CIT (A) –

The Ld. CIT (Appeals) enhanced the income of the assessee to Rs. 3,70,94,100/- by enhancing the income by Rs. 3,27,45,060/-stating as under (Page -34):-

“iv. The flow pattern of the funds shows clearly that the appellant is in receipt of funds from diverse sources without any plausible explanation and the same funds are very speedily paid out ostensibly as investments or other forms of payoffs by the appellant. The same is corroborated by examining the pattern of receipt of funds and the outgoings. In absence of any details about the payouts and inflows along with the purposes of such payments, the entire credits are required to be treated as income of the appellant. The appellant has also avoided getting the accounts audited as required per law.

Thus, it is clear that the inflow of the funds that the same are sans any explanation in respect of the identity and capacity of the source along with the capacity to enter such transactions nor is there any explanation in respect of the purpose of such linear flow of funds. The Ld. AR could not furnish the details regarding purposes of the inflow and outflow of the funds. The entity also was struck off its registers by the Registrar of Companies. The appellant has failed to clearly demonstrate any specific carrying out of business to explain the flow of funds in and out of the bank account. The entire factual matrix as above establishes that the appellant is not carrying out any business activities as conventionally perceived.

Total debits in ICICI Bank Account Rs. 3,67,700,854/-

You have not given any detail about the deposits as also the payments. It is also seen that the accounts have not been audited as per law.

Please show cause why the entries Credit in your Bank Account should not be treated as your Income in absence of any explanation.

Your reply should reach this office by 27.09.2018.”

As apparent from above facts, it is observed that opportunity of being heard was provided to the assessee in this case. Copy of Show Cause Notice dated 20.09.18 along with evidence of service is attached herewith. However, the Hon'ble ITAT stated in its order that no opportunity was provided and hence allowed the appeal of the assessee. Therefore, a miscellaneous application is being filed in this case.

(NOTE: A Miscellaneous application was being filed in this case on 06.10.2023, however, inadvertently an appeal got filed with acknowledgement no. 1696588680 instead of MA whereby Form 36 was also filled. Therefore, it is requested to reject that appeal with ack no. 1696588680 and allow this miscellaneous application to be filed in this case.]

*Yours faithfully,
Sd/-
(C.B ARORA)
Income Tax Officer
Ward-21(1), Delhi*

Encl.:As above.

2. Learned DR reiterated the submissions made in the letter dated 4.12.2023 and prayed for withdrawal of the present appeal as the same has been filed inadvertently.

3. Considering the submissions made in the letter dated 4.12.2023 and the submissions of the learned DR, the appeal filed by the Revenue is dismissed as not maintainable.

Order pronounced in open court on 12.12.2023.

**Sd/-
(KUL BHARAT)
JUDICIAL MEMBER**

MP

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**