

IN THE INCOME TAX APPELLATE TRIBUNAL  
“E” BENCH, MUMBAI  
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &  
SHRI MS PADMAVATHY S, ACCOUNTANT MEMBER

ITA No. 2810/Mum/2023  
(A.Y: 2011-12)

Tin Time Consultancy Pvt Ltd., (Successor of Avdharna Trading Pvt Ltd)302,CFC Bldg No. 1, 3 <sup>rd</sup> Floor, Asmeeta Textile Park, Addl. Kalyan Bhiwandi Industrial Area, Village Kon, Bhiwandi, Maharashtra-421311.	Vs.	ITO, Ward 1(1) 1 <sup>st</sup> Floor, Mohan Plaza, Kalyan West, Maharashtra-421301.
PAN/GIR No. : AAICA4811G		
Appellant	..	Respondent

Appellant by :	Shri Hiten Gohil.AR
Respondent by :	Shri P.D Chougule.Sr.DR

Date of Hearing	05.12.2023
Date of Pronouncement	06.12.2023

आदेश / O R D E R

**PER PAVAN KUMAR GADALE JM:**

The assessee has filed the appeal against the order of the National Faceless Appeal Centre (NFAC), Delhi /CIT (A) passed u/sec 250 of the Act.

2. There is a delay in filing the appeal before the Hon'ble Tribunal and the application for condonation of delay was filed. Whereas, the facts mentioned in the application are reasonable and the Ld. DR has no specific objections. Accordingly, we condone the delay and admit the appeal. The assessee has raised the following grounds of appeal:

1. *On the facts and circumstances of the case as well as in Law, the order passed u/s 144 r.w.s 254 r.w.s 144B of the Income tax act, 1961 is bad in law and infractious ab-initio.*

2. *On the facts and circumstances of the case as well as in Law, the order u/s 144 r.w.s 254 r.w.s 144B of the Income Tax Act, 1961 is issued without affording the appellant a reasonable opportunity to present its case.*

3. *On the facts and circumstances of the case as well as in Law, the Learned Assessing officer has grossly erred in directing addition of unsecured loans amounting to Rs.1.15,06,840/- u/s 68 of the Act. The addition directed by the Learned Assessing Officer, sustained bby the Hon'ble Commissioner of Income Tax (Appeals). NFAC despite remand report of the predecessor Assessing officer already on record is unfair and illegal and needs to be struck down.*

4 *On the facts and circumstances of the case as well as in Law, the Learned Assessing officer grossly erred in directing addition Sundry amounting of creditors to Rs.155.27,426/- u/s 68 of the*

*Act. The addition directed by the Learned Assessing Officer, sustained by the Hon'ble Commissioner of Income Tax (Appeals), NFAC despite remand report of the predecessor Assessing officer already on record is unfair and illegal and needs to be struck down.*

*5. On the facts and circumstances of the case as well as in Law, the Learned Assessing Officer has grossly erred in directing addition of purchase value of shares amounting to Rs.2,68,46,100/- u/s 69A of the Act. The addition directed by the Learned Assessing officer, sustained by the Hon'ble Commissioner of Income Tax (Appeals), NFAC is unfair and illegal and needs to be struck down.*

*6. The Learned Assessing Officer as well as the Learned Commissioner of Income tax has not given a fair and reasonable opportunity to the appellant to present its case.*

*7. The order under appeal is not only bad in law and invalid, but also against the principals of natural law of equity and justice.*

*7 The appellant reserves its rights to add, to amend, alter/delete and/or modify the above grounds of appeal before or during the course of appellate proceedings.*

3. The brief facts of the case are that the assessee is engaged in the business and has filed the return of income for the A.Y 2011-12 on 27.09.2012 disclosing a total income of Rs.Nil and the return of income was processed u/sec143(1) of the Act. Subsequently the case was selected for scrutiny under CASS and notice u/s 143(2) and 142(1) of the Act along with questionnaire are issued. Whereas the AO has passed the assessment order U/sec144 of the Act

dated 19-03-2014 with the addition of unsecured loan and sundry creditors. Aggrieved by the order, the assessee has filed an appeal before the CIT(A), whereas the CIT(A) has granted relief to the assessee, and the revenue on further appeal before ITAT against the order of the CIT(A), the Hon'ble Tribunal has restored the issues to the file of the Assessing officer. Now the Assessing Officer has issued notice u/sec 142(1) of the Act along with the questionnaire. Since there was no compliance to the notices issued, the A.O invoked best judgment assessment based on the material available on record and made addition of (i) unsecured loans U/sec68 of the Act of Rs.1,15,06,840/- (ii) unexplained sundry creditors of Rs.1,55,27,460/- and (iii) unexplained investments U/sec69A of the Act of Rs.2,68,46,100/- and finally assessed the total income of Rs.5,38,58,435/- and passed the order u/s 144 r.w.s 254 r.w.s 144B of the Act dated 27.09.2021.

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. We 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 11-04-2023, 21.04.2023 and 04-05-2023 referred at Para 4.3 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. 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 on merits and the assessee should be provided adequate opportunity of hearing and shall cooperate in submitting the information for early disposal of appeal. And, we allow the grounds of appeal of the assessee for statistical purposes.

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

Order pronounced in the open court on 06.12.2023.

Sd/-  
(PADMAVATHY S)  
**ACCOUNTANT MEMBER**

Sd/-  
(PAVAN KUMAR GADALE)  
**JUDICIAL MEMBER**

Mumbai, Dated 06.12.2023

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

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

( Asst. Registrar)  
ITAT, Mumbai