

IN THE INCOME TAX APPELLATE TRIBUNAL

"D" BENCH, MUMBAI

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.2992/Mum./2023

(Assessment Year : 2009-10)

M/s. Rama Enterprises
164, Gurdas Bhavan, 4th Cross Road
Chembur, Mumbai 400 071
PAN – AAIFR2223E

..... Appellant

v/s

Income Tax Officer
Ward-27(3)(1), Mumbai

..... Respondent

Assessee by : None

Revenue by : Smt. Mahita Nair

Date of Hearing – 20/12/2023

Date of Order – 29/12/2023

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 28/06/2023, passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*learned CIT(A)*], for the assessment year 2009-10.

2. When this appeal was called for hearing neither anyone appeared on behalf of the assessee nor was any application seeking adjournment filed despite service of notice. Therefore, in view of the above, we proceed to dispose off the present appeal ex-parte, qua the assessee after hearing the

learned Departmental Representative ("*learned DR*") and on the basis of material available on record.

3. In this appeal, the assessee has raised the following grounds:-

"1. On facts and circumstances prevailing in the case and as per provisions & scheme of the Income-tax Act, 1961 ("the Act") it be held that addition of Rs. 72,08,903/- made by the Ld. AO and further upheld by the First Appellate Authority is unwarranted, unjustified and contrary to the provisions of the Act and facts prevailing in the case. The addition so made shall be deleted. The Appellant be granted just and proper relief in this respect.

2. The appellant prays to be allowed to add, amend, modify, rectify, delete, raise any grounds of appeal at the time of hearing."

4. The brief facts of the case are that an assessment order under section 143(3) of the Act was passed on 20/12/2011 determining the total income of the assessee at Rs. 1,90,320 against the returned income of Rs. 1,50,950. Subsequently, reassessment proceedings under section 147 of the Act were initiated and notice under section 148 of the Act was issued on 27/01/2015. During the reassessment proceedings, notice under section 133(6) of the Act issued to one of the sundry creditors, i.e. M/s Vikas Steel, was received back unserved. As per the assessee, he owes Rs. 72,08,903 to M/s Vikas Steel. Further, the assessee was asked to show cause as to why the aforesaid sum shown as sundry creditors be not added to the total income of the assessee. However, in response to the show cause notice, no explanation was offered by or on behalf of the assessee. Since the assessee failed to discharge the onus cast on him, the Assessing Officer proceeded to complete the reassessment proceedings under section 144 of the Act on the basis of material available on record. Accordingly, vide order dated 08/12/2015 passed under section 144 read with section 143(3) of the Act the aforesaid

amount of Rs. 72,08,903 was added to the total income of the assessee in the absence of any supporting evidence.

5. In the appeal before the learned CIT(A), despite various notices being issued, no reply/submission was filed on behalf of the assessee. Accordingly, vide impugned ex-parte order dated 28/06/2023, the learned CIT(A) dismissed the appeal filed by the assessee. Being aggrieved, the assessee is in appeal before us.

6. We have considered the rival submissions and perused the material available on record. It is evident that the learned CIT(A) has passed the order ex-parte due to the non-appearance of/on behalf of the assessee. It is evident from the record that the learned CIT(A) issued notices on 17/02/2021, 21/09/2021, 23/05/2023, 05/06/2023, 12/06/2023 and 22/06/2023, however no compliance was made by the assessee. Even in the present appeal, no one has appeared on behalf of the assessee. We are of the view that without any reasonable and sufficient cause and due to the non-compliant behaviour of the assessee, the energy and time of the Income Tax Authority have been wasted which could have been used for justice delivery in other cases. We further find that no finding has been rendered by the learned CIT(A) on the merits of the appeal in the impugned order. In the circumstances, we feel it appropriate to impose a cost of Rs.5,000/-, which the assessee shall pay to the Prime Minister's Relief Fund within 30 days from the date of receipt of this order. Subject to the payment of the cost by the assessee, the order of the learned CIT(A) is set aside and the matter is restored back to the file of the learned CIT(A) for deciding afresh on merits

after taking into consideration submissions of the assessee. Needless to mention no order shall be passed without affording reasonable opportunity of hearing to the parties. Further, the assessee is directed to appear before the learned CIT(A) on all the dates of hearing as may be fixed without any default. As a result, grounds raised by the assessee are allowed for statistical purposes.

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

Order pronounced in the open Court on 29/12/2023

Sd/-
B.R. BASKARAN
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 29/12/2023

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Mumbai; and
- (5) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai