

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

BEFORE SHRI AMIT SHUKLA (JUDICIAL MEMBER)
AND
MS. PADMAVATHY S. (ACCOUNTANT MEMBER)

ITA No. 2615/MUM/2023
Assessment Year: 2012-13

Alpha Heavy Engineering Pvt. Ltd.,
42, Zarna Apartments Nahur
Village Road,
Mulund West-400080

Vs.

ITO-15(1)(1),
Room No. 456, 4th floor,
Aayakar Bhavan,
Maharishi Karve Road,
Churchgate,
Mumbai-400020.

PAN NO. AAJCA 1768 M
Appellant

Respondent

Assessee by : None
Revenue by : Mr. A.S. Sant, Sr. DR

Date of Hearing : 27/12/2023
Date of pronouncement : 29/12/2023

ORDER

PER PADMAVATHY S., AM

This appeal is against the order of the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre dated 13.03.2023 for assessment year 2012-13. The assessee raised the following grounds:

1. In the facts and circumstances of the case and in law, the National Faceless Appeal Centre - CIT(A) has erred in confirming the action of the Ld. Assessing Officer of adding Rs. 11,68,000/- to the income of the appellant being 20% of alleged



contract receipts of Rs. 58,40,000/-when the actual contract receipts are Rs. 29,20,000/- •

2. Without prejudice to the above ground, the National Faceless Appeal Centre - CIT(A) has erred in the facts and circumstances of the case and in law in estimating income at exorbitant rate of 20% of contract receipts.

3. In the facts and circumstances of the case and in law, the National Faceless Appeal Centre - CIT(A) has erred in confirming the action of the Ld. Assessing officer of adding Rs. 8,36,965/- to the income of the appellant being deposits into the bank by treating the same as unexplained cash credit merely on surmises and conjectures.

4. In the facts and circumstances of the case and in law, the National Faceless Appeal Centre - CIT (A) has erred in confirming the action of the Ld. Assessing officer of adding Rs. 99, 30,973/- to the income of the appellant being credit entries reflected in bank statement by treating the same as unexplained cash credits on ad hoc basis without considering the fact that above sum includes cheque reversals/returns and amounts transferred by directors for daily operations.

5. In the facts and circumstances of the case and in law, the National Faceless Appeal Centre - CIT (A) has erred in passing the order u/s 250 of the Income Tax Act, 1961, without providing an opportunity of personal hearing, thus violating the principles of natural justice.

2. The assessee company has not filed the return of income for the assessment year 2012-13. The Assessing Officer noticed from the NMS Module as well as ITS details that during the financial year 2011-12 relevant to assessment year 2012-13. The assessee has deposited cash aggregating to Rs.6,55,000/- in Karur Vysya Bank Ltd. and also the assessee company was in receipt of contract charges amounting to Rs.58,40,000/-. The Assessing Officer issued a notice u/s 148 through ITBA on 22.03.2019. The assessee did not respond to the notices issued by the Assessing Officer and the



notice issued through speed post was returned un-served. The Assessing Officer issued a final notice on 26.09.2019 informing the assessee that in the absence of any response the assessment would be completed u/s 144 of the Act. Since, the assessee did not respond to even the final notice the Assessing Officer proceeded to complete the assessment u/s 144 r.w.s. 147 of the Act. The Assessing Officer issued a notice u/s 133(6) of the Act to Karur Vysya Bank Ltd. and in response a copy of the account statement for the period of 01.04.2011 to 21.03.2012 was received. On going through the bank statement the Assessing Officer noticed that the assessee had deposited cash to the tune of Rs.8,36,965/- and also there was a credit to the tune of Rs.1,20,30,973/- in the bank account. The Assessing Officer issued a fresh notice u/s 142(1) dated 29.11.2019 calling on the assessee to explain under that :

- i. *why income from contract charges received of Rs.58,40,000/- should not be estimated.*
- ii. *why cash deposit of Rs.8,36,965/- made in the bank account should not be treated as unexplained cash credit.*
- iii. *why credit entries in the bank account should not be treated as income.*

3. The assessee did not file any Explanation to the notice u/s 142(1) of the Act. Accordingly the Assessing Officer made an estimation of income @ 20% of total contract charges of Rs.58,40,000/- to make an addition of Rs.11,68,000/-. The AO



further made addition u/s 68 of the Act towards cash deposits of Rs.8,36,965/- and also the credit entries in the bank account amounting to Rs.99,30,973/-.

4. Aggrieved the assessee filed an appeal before the Ld. CIT(A).

5. Even before the Ld. CIT(A) the assessee did not respond to the various notices issued and therefore the Ld. CIT(A) proceeded to determine the appeal based on the materials available on record. With regard to the income issued @ 20% of total contract charges. The Ld. CIT(A) directed the Assessing Officer to give credit for the TDS amounting to Rs.58,400/-. With regard to the additions made u/s 68 of the Act after verification of materials on record the Ld. CIT(A) gave relief to the extent of cheques returned.

6. Aggrieved the assessee is in appeal before the Tribunal. There is a delay of 75 days in filing the appeal before us the assessee has filed a letter stating that the order u/s 250 of the Act which was sent through e-mail was not received by the assessee since the e-mail ID was not operational. Subsequently, when the assessee checked the appeal proceedings in the e-filing portal in July 2023 the assessee came to know that the appellate order was passed on 13.03.2023. The assessee, therefore, could not file the appeal within the statutory limitation period of 60 days and accordingly prayed for condonation of delay of 75 days in filing the appeal.



7. Having heard the Ld. Departmental Representative (DR) and perused the material on record, we are of the view that there is a reasonable and sufficient cause for the delay in filing the appeal before the Tribunal. Therefore following the Hon'ble Supreme Court decision in the case of Collector, Land Acquisition Vs. MST.Katiji & Ors., (167 ITR 471) (SC) we condone the delay of 75 days in filing the appeal and admit the appeal for adjudication.

8. Even before us, the Ld. AR of the assessee did not make any appearance in spite of sending hearing notices through e-mail.

9. The Ld. DR submitted that the assessee is in the habit of not appearing and submitting the relevant details and therefore, prayed that the order of the Ld. CIT(A) be upheld.

10. We have heard the parties and perused the materials available on record. The assessee had not filed any return of income. Based on the details in the ITS Portal, the Assessing Officer had issued the notice u/s 148 of the Act. The Assessing Officer based on the bank statements obtained from Karur Vysya Bank Ltd. had noticed certain credits into the bank account of the assessee and had called for furnishing details in this regard. The assessee before the Assessing Officer neither responded notices issued u/s 148 of the Act nor subsequent notice calling for details u/s 142(1) of the Act. We also notice that the assessee did not appear before the Ld. CIT(A) who has concluded the appellate proceedings ex-parte based



on the materials available on records. Given this in the interest of natural justice and fair play we are of the considered view that the assessee be given one final opportunity to present the case on merits. Accordingly we remit the issue back to the Assessing Officer for de novo verification calling for necessary details as may be required. The assessee is directed to furnish the required information as may be called for without seeking any adjournments and cooperate with the proceedings. It is order accordingly.

11. In the result, the appeal of the assessee is allowed for statistical purposes.

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

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Sd/-
(PADMAVATHY S.)
ACCOUNTANT MEMBER

Mumbai;

Dated: 29/12/2023

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