

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

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI RAHUL CHAUDHARY, JM

ITA No. 2753/Mum/2023

(Assessment Year: 2016-17)

NNGD Leasing and Trading
Private Limited
(Formerly Murugun Textile P. Ltd.)
102, Jamuna CHS Ltd, Plot
No.65, Sher E-Punjab Society,
Mahakali Caves Road, Andheri
(East), Mumbai -400 093

(Appellant)

Vs.

The DCIT
Circle 1(1)(1),
Aaykar Bhavan,
M.K. Road, Mumbai-400 020

(Respondent)

PAN No. AABCM4669F

Assessee by : Ms. Dinkle Haria, AR
Revenue by : Smt. Mahita Nair, SR DR

Date of hearing: 04.01.2024

Date of pronouncement 05.01.2024

:

ORDER

PER PRASHANT MAHARISHI, AM:

01. This appeal is filed by NNGD leasing and trading private limited (formerly known as Murugan textiles private limited amalgamated with Anant merchants and traders private limited) (the assessee/appellant) against appellate order passed by the National faceless appeal Centre Delhi (the learned CIT - A) for assessment year 2016 - 17 on 31//05/2023 wherein the appeal filed by Anant merchants and

traders private limited in the name of Murugan Textiles Pvt Limited against the assessment order passed under section 143 (3) of the act on 28 December 2018 by The Assistant Commissioner Of Income Tax – 9 (1) (2) Mumbai (the learned AO) was dismissed holding that assessee is not keen on pursuing the appeal as no information was received from the assessee.

02. Assessee aggrieved has raised the issue that the order passed by the learned CIT – A is bad, illegal and without jurisdiction and further the CIT – A in dismissing the appeal on the allegation that appellant was not interested in pursuing the appeal ex parte. Further, the ground on merits was also raised.

"1. THE ORDER BAD, ILLEGAL AND WITHOUT JURISDICTION

1.1 In the facts and the circumstances of the case, and in law, the appellate order framed by the Commissioner of Income-tax (Appeals), National Faceless Appeal Centre, Delhi ("NFAC") [Ld. CIT (A)] be held as bad, and illegal and without jurisdiction, as the same is framed in breach of the statutory provisions and the scheme.

2. EX-PARTE ORDER

2.1 The Ld. CIT (A) erred in dismissing the appeal, on the allegation that the Appellant was not interested in pursuing the appeal.

2.2 While doing so, the Ld. CIT (A) failed to appreciate that the non-attendance /non- reply was for the reasons not attributable to the Appellant /

beyond the control of the Appellant and not deliberate or intentional.

2.3 It is submitted that in the facts and the circumstances of the case, and in law, no such action was called for. WITHOUT PREJUDICE TO THE ABOVE

3. DISALLOWANCE OF INTEREST EXPENDITURE FOR RS.1,08,12,784/-

3.1 The Ld. CIT (A) erred in confirming the action of the A.O. in making disallowance of Rs. 1,08,12,784/- the entire expenditure u/s 37 (1) of the Income tax Act, 1961.

3.2 While doing so, the Ld. CIT (A) erred in:

(i) Basing his action only on surmises, suspicion and conjecture;

(ii) Taking into account irrelevant and extraneous considerations; and

(iii) Ignoring relevant material and considerations as submitted by the Appellant.

3.3 It is submitted that in the facts and the circumstances of the case, and in law, no such disallowance was called for.

3.4 Without prejudice to the above, assuming but not admitting that some disallowance was called for, it is submitted that the computation of the disallowance made by the A.O. was arbitrary, excessive and not in accordance with the law.

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4. The Appellant craves leave to add, alter, delete or modify all or any the above ground at the time of hearing."

03. The brief fact of the case shows that M/s Murugan textiles private limited was amalgamated with Anant merchant and traders private limited, which further amalgamated with NNGD leasing and trading private limited and therefore assessee has filed revised form number 36 in the name of NNGD leasing and trading private limited as appellant.
04. Assessee filed return of income for assessment year 2016 - 17 in the name of Murugan textiles private limited on 15/10/2016 declaring a total income of Rs. 9,060,110. The return was picked up for scrutiny and notice under section 143 (2) was issued on 7/9/2017 which was duly served on the assessee company. During pendency of the assessment proceedings, the assessee company was amalgamated with Anant merchants and traders private limited with effect from 1/4/2017 as per the order of the National company law Tribunal dated 4/4/2018. Case records therefore transferred to the assessing officer on 10/12/2018.
05. During assessment proceedings, the AO noted that assessee has incurred an expenditure on interest charges/finance charges of Rs 10,812,784. On questioning about the nature of such expenditure, it was explained that assessee has borrowed funds of bank overdraft facility of Rs. 147,185,326 and letter of credit finance of Rs 75 crores. The AO noted that assessee has invested during the year in convertible debentures, equity shares as well as compulsorily convertible preference shares of

another company amounting to Rs. 626,147,073. On examination, the learned assessing officer was of the view that interest/finance cost incurred in form of interest is made for investment made in the related parties and therefore such interest expenditure is not allowable under section 37 (1) of the act.

06. The assessee submitted on 26/12/2018 that all those investments are strategic investment made by the assessee company with goal and mission to develop and expand the business and therefore investment made is for the purpose of the business. The assessee also submitted that investment in equity and preferential capital of one of the companies was made from the interest free advances received from future retail Ltd. Therefore, there is no question of disallowance of any interest.
07. The learned assessing officer held that there is no nexus of investment made in those companies as strategic investment as business of such companies is different from that of the assessee. Further some investment was made from interest free funds cannot be believed as those funds were received as advance for goods therefore the learned assessing officer held that assessee has incurred finance cost due to diversion of funds from working capital to non-current investment and disallowed interest amounting to Rs. 10,812,784 under section 37 (1) of the act.
08. Further the learned assessing officer found that there is a prepaid insurance premium of Rs. 95,837 which was related to assessment year 2017 - 18 and not pertaining to this year being an advance payment and therefore he disallowed the same.

09. The total income of the assessee was computed by making the about to disallowances at Rs. 19,968,729 against the returned income of the assessee at Rs. 9,060,108/- the assessment order under section 143 (3) of the act was passed on 28/12/2018. The assessment order was passed in the name of Murugan textiles private limited (amalgamated with Anant merchants and traders private limited).
010. Assessee aggrieved with that order preferred an appeal in form number 35 before the learned CIT – A in the name of Murugan textiles private limited giving the email ID of Murugan.textile@yahoo.com with mobile number 9867489964.
011. The above appeal originally filed by the assessee was migrated to the National Faceless Appeal Centre. The assessee was provided opportunities by the learned CIT – A to submit documents and make submissions in response to the appeal filed on five different occasions which remained un responded and therefore the learned CIT – A following the decision of the honourable madras High Court and other judicial precedents held that assessee is not keen on pursuing the appeal as no information is submitted and therefore the learned CIT – A left with no option but to dismiss the appeal. Accordingly, appeal of the assessee was dismissed for that reason.
012. Assessee aggrieved with the appellate order preferred an appeal before us. Assessee submitted that the CIT – A has not decided the issue on merits of the case but has held that assessee is not interested in pursuing the appeal. It was submitted that due to the various restructuring of amalgamation of Murugan textile private limited with Anant merchants and traders private limited and further amalgamation with the present assessee mentioned in revised

form number 36 as NNGD leasing and trading private limited notices could not be responded as it was with respect to PAN of Murugan Textiles P Ltd. It was further submitted that as Murugan textiles private limited has already merged/amalgamated with another company the emails stated by appellate authority have not been received by the assessee. Therefore, the assessee could not perhaps respond to emails cited by the learned CIT – A in paragraph number 5.2 of his appellate order. It was submitted that if given one more opportunity, the assessee would comply with the requirement before the learned CIT – A.

013. The learned departmental representative vehemently supported the order of the lower authority and submitted that the learned CIT – A has issued notices at the email given by the assessee in form number 35 itself and further the notices were also served through ITBA portal and therefore there is no other alternative left with the learned CIT – A to communicate with the assessee. It is not only once but five times the learned CIT – A issued the notice, and the assessee did not respond to any of such mails and therefore there is no infirmity in the order of the first appellate authority.
014. We have carefully considered the rival contentions and perused the orders of the lower authorities. We find that the learned CIT – A has dismissed the appeal of the assessee not on the merits of the addition but holding that assessee is not keen on pursuing the appeal as it did not respond to the various notices issued. On careful perusal of the order of the learned CIT – A we find that nothing has been discussed on the merits of the case and grounds raised therein but the appeal has been

decided and dismissed holding that assessee is not keen to pursue the appeal.

015. According to the provisions of section 250 (6) of the act the appellate order disposing of the appeal shall state the points for determination, the decision thereon and the reasons for the decision. The assessee has raised the issue of disallowance of interest of Rs. 10,812,784/- under section 37 (1) of the act before the learned CIT – A as per copy of form number 35 filed before us. On reading the order of the learned CIT – A we do not find that any decision is given on the grounds of appeal raised by the assessee. Thus, we find that the order of the learned CIT – A is not in accordance with the provisions of section 250 (6) of the act.
016. We also find that despite the assessee i.e., Murugan textiles private limited amalgamated with Ananta merchants and traders private limited with effect from 1/4/2017, the appeal was filed in the name of Murugan textiles private limited. The assessment order is also passed in the name of Murugan textiles private limited. Even appeal before us was also filed originally in the name of that entity only. Later, revised form number 36 was submitted incorporating the name of NNGD leasing and trading private limited.
017. In view of the above facts, we restore the appeal of the assessee back to the file of the learned CIT – A to decide the issue on the merits of the case in terms of provisions of section 250 (6) of the act by giving an opportunity of submission of the details to the assessee. As soon as the opportunity of submission is given to the assessee, assessee should submit such details within the time provided. Thereafter, the learned



CIT – A may decide the issue on the merits after giving opportunity of hearing to the assessee, if asked for.

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

Order pronounced in the open court on 05.01.2024.

Sd/-
(RAHUL CHAUDHARY)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 05.01.2024

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Copy of the Order forwarded to :

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

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai