

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

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

ITA No. 3171/Mum/2023

(Assessment Year: 2012-13)

RND Hospitality Pvt. Ltd.
C/o Santosh Mayekar,
15/16 Kharote House,
Waras Lane,
Opp. Coast Guard Head Qtrs,
Worli Village, Mumbai-400 030

(Appellant)

Vs.

ITO Ward 13(3)(2)
Piramal Chambers,
Mumbai-400 012

(Respondent)

PAN No. AAFCR2658R

Assessee by : Shri Ajay Singh, Adv.
Revenue by : Smt. Mahita Nair, SR. DR

Date of hearing: 02.01.2024

Date of pronouncement 05.01.2024

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ORDER

PER PRASHANT MAHARISHI, AM:

01. ITA No.3171/Mum/2023 is filed by RND Hospitality Pvt. Ltd. (assessee /appellant) against the appellate order passed by National Faceless Appeal Centre, Delhi [the learned CIT (A)] for A.Y. 2012-13, on 11th July, 2023, wherein the appeal filed by the assessee against the assessment order passed on 11th December, 2019 under Section 144 read with section 147 of the Income-tax Act, 1961 (the Act) by the ITO Ward, 13(3)(2), Mumbai, (the learned Assessing Officer), was dismissed.

02. Therefore, assessee is in appeal before us raising following grounds of appeal:-

"EX-PARTE ORDER:

1. *On the facts, circumstances of the case and in law, the Ld. CIT (A) erred in disposing the appeal ex-parte without allowing the assessee an opportunity to file the necessary details without appreciating the fact that the company is stricken off by Registrar of Companies and the other two directors were non cooperative, therefore the present available director was only saddled with the responsibility of pursuing the present appeal and to avoid the personal liability. The appellant was in the process of collating the data from parties as the matter was very old and therefore it prayed to your honour to provide an opportunity of being heard in the preset case.*

2. *Without prejudice to above ground, the appellant pray to your honour to permit the appellant to file the documentary evidence in accordance with Rule 29 of the ITAT Rules.*

ADDITION U/S. 69A OF RS. 82,83,000/-:

3. *On the facts, circumstances of the case and in law, the Ld. CIT (A) erred in upholding the additions of Rs. 82,83,000 made U/s 69A of the Income Tax Act, 1961, being aggregate of all credit entries in the bank account of HDFC Bank without appreciating the complete facts of the case. It is submitted that Ld. CIT (A) failed to appreciate the fact that substantial part of the credit entries pertains to the loan taken*

for setting up the business of the appellant which were received through banking channel. It is therefore prayed to your honour that addition made is not justified and necessary directions may be given in this regard.

4. Your appellant craves to add, alter, or amend any of the grounds of appeal on or before the date of hearing of appeal."

03. Brief facts of the case show that assessee did not file its return of income for A.Y. 2012-13. The reasons were recorded for reopening of assessment as it was found that cash deposit in the bank account of the assessee of ₹12 lacs and assessee is a non filer despite assessee has to file return mandatorily. Notice under Section 148 of the Income-tax Act, 1961 (the Act) was issued on 25th March, 2019. The notice was also issued through ITBA portal, as well as by post. The postal notice sent, returned unserved with the remark "Left the address". Thereafter by affixture notice under Section 148 of the Act was served on 3rd April, 2019. Notice under Section 142(1) of the Act was issued on 30th September, 2019, was also sent through post, which returned back as "Left" and thereafter notice was served by affixture. The assessee did not comply with the same. The learned Assessing Officer issued notice under Section 133(6) of the Act to the banker who submitted the bank statement and it was found that in the bank account total credit of ₹82.83 lacs was made out of which ₹6 lacs was deposited by cash. This bank account was closed on 16th June, 2016. From the KYC details of the bank account, the address of three directors were found and notices under Section 142(1) of the Income-tax Act, 1961 (the Act) was issued to all the three directors. The notices were served to the two directors and one notice returned with

remark "Left". None of them complied with the notices. Therefore, further show cause notice under Section 142(1) of the Act was issued on 3rd December, 2019 to the company as well as to all the directors that why the sum of ₹82,83,000/- credited to the bank account maintained with the HDFC Bank should not be treated as unexplained money. No compliance was made therefore, an assessment order under Section 144 of the Income-tax Act, 1961 (the Act) read with section 147 of the Act was passed on 11th December, 2019, by making addition of ₹82,83,000/- as unexplained money under Section 69A of the Act.

04. The assessee aggrieved with the same preferred the appeal before the learned Commissioner of Income-tax (Appeals). The learned CIT (A) fixed the hearing on nine occasions, out of which only of two occasions adjournment petitions were filed and rest all the notices were not responded. Therefore, the learned CIT (A) confirmed the order of the learned Assessing Officer. Against that order assessee is in appeal before us.
05. Before us, the assessee made an application for filing of additional evidences stating that due to the severe dispute among the directors of the company the name of the assessee was struck off from the register of the Ministry of Corporate Affairs company master data and as the directors were not on talking terms and therefore, none of the directors complied with the notices. It was also the fact that the business of the company did not start at all and therefore, the assessee was not in a position to furnish the necessary evidences called for. It was further submitted that the learned Assessing Officer has made the addition of total sums credited in the bank account of the assessee. It was submitted that the additional evidences show that assessee is able to substantiate the credit of ₹67.75

lakhs in the bank account of the assessee this is supported by the confirmation, bank account of the lenders as well as the return of income of the lenders. It further stated that the assessee also substantiates further credit in the bank account of the assessee of ₹8 lacs therefore, out of the total credit of ₹82.83 lacs the assessee has made an application for admission of additional evidences to the extent of ₹75 lacs approximately. With respect to the cash deposit, It was submitted that assessee is trying to substantiate that also. The learned Authorized Representative referred to the bank account of the assessee with HDFC bank, wherein cash deposit of ₹6 lacs was shown on 4th October, 2011, and there is no other cash deposit. It was submitted that it is not Rs 12 lakhs as claimed by the Id AO. In view of this, it was submitted that the assessee may be granted one more opportunity of hearing.

06. During the course of hearing, director of the company Mr. Santosh Mayekar was also present who also stated that due to the bad situation the information could not be furnished and he promised to co-operate during the assessment proceedings if one more opportunity is granted.
07. The learned Departmental Representative submitted vehemently, that the assessee has been granted enough opportunities by the learned Assessing Officer as well as by the learned CIT (A) but the assessee has not co-operated by making any representation. She extensively read the assessment order, wherein the notices were sent to the directors also along with the company during the assessment proceedings and assessee was granted eleven opportunities to put fourth its case and therefore, now it would be improper to give one more opportunity to the assessee.



08. We have carefully considered the rival contentions and perused the orders of the lower authorities. Admittedly, in this case, assessee did not file its return of income, despite it is required to file it mandatorily. The assessee was issued notices along with its directors, but it remained unresponded. Therefore, the learned Assessing Officer issued notice under Section 133(6) of the Act to the banker of the company as no explanation is forthcoming and therefore, made the addition of total sums deposited in the bank account of the assessee of ₹82,83,000/- including cash deposit of ₹6 lacs. Before the learned CIT (A), he issued eleven notices for hearing, however, assessee did not respond to any of the notices except seeking adjournment twice. Before us, the assessee has filed an application for admission of additional evidences. In the additional evidences, the assessee has given confirmation and details of deposit of Rs 67.75 lacs. This has happened because of non-commencement of the business of the assessee resulting into dispute amongst directors and name of the assessee company being struck off from the register of MCA for non filing of returns there to. We find that there is a substantial cause for failure of the assessee to produce such evidences before the learned Assessing Officer and the appellate authorities. In view of this, in terms of Rule 29 of the Income Tax Appellate Tribunals Rules, 1963, we admit the additional evidences furnished by the assessee and restore the matter back to the file of the learned Assessing Officer. The assessee is directed to submit the complete details of its submission along with its initial onus to be discharged with respect to the addition of ₹83.23 Las u/s 68 of the act. Such details must be submitted within 90 days from the date of receipt of this order. The learned Assessing Officer may examine the same and decide the issue in accordance with the law.



09. Accordingly, ground no.1 and 2 of the appeal of the assessee are 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

Sudip Sarkar, Sr.PS



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