

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ, अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
" D " BENCH, AHMEDABAD

BEFORE SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER &
MS. SUCHITRA RAGHUNATH KAMBLE, JUDICIAL MEMBER

ITA No.627/Ahd/2023
Assessment Year : 2017-18

Aaditya Diamgold Pvt.Ltd. 21, 1 st Floor Iscon Arcade Nr.Lal Bungalows CG Road Navrangpura Ahmedabad Gujarat - 380 009	v.	The Income Tax Officer Ward-1(I)(I) Ahmedabad
PAN: AALCA 4525 A		

अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
Assessee by :	Shri Parimal Sinh B. Parmar, AR
Revenue by :	Shri Shri Atul Pandey, Sr.DR

सुनवाई की तारीख/Date of Hearing : 17/01/2024
घोषणा की तारीख /Date of Pronouncement: 17/01/2024

आदेश/ORDER

PER RAMIT KOCHAR, ACCOUNTANT MEMBER

This appeal filed by the assessee is directed against the appellate order dated 14/07/2023 passed by Ld. Commissioner of Income-tax (Appeals), National Faceless Appeal Centre, Delhi ["CIT(A)" in short] under section 250 of sub-section (6) of the Income Tax Act, 1961(hereinafter called "the Act") for Assessment Year 2017-18 (DIN & Order No. ITBA/NFAC/S/250/2023-24/ 1054374868(1)), the appellate proceedings have arisen before Id. CIT(A) from assessment order dated 30.12.2019 passed by Id. Assessing Officer (hereinafter called "the AO") u/s 143(3) of

the 1961 Act(DIN & Order No. ITBA/AST/S/143(3)/2019-20/1023484726(1)).

2. The assessee has raised following grounds of appeal in Memo of Appeal filed with Income Tax Appellate Tribunal, Ahmedabad Benches, Ahmedabad (hereinafter called "the Tribunal"):

"1. The Ld. CIT(A) has erred in law and on facts in passing an unreasoned and non-speaking order without dealing with any of the contentions raised. Thus, Ld. CIT(A)'s order is bad in law as it suffers from the vice of principals of natural justice.

2. The Ld. CIT(A) has erred in disposing the impugned assessment order without stating the points for determination, the decision arrived at by the Ld. AO as well as the reasons for the decision, thereby violating section 250(6) of the Act.

3. The Ld. CIT(A) has erred in law and on facts in confirming the action of the Ld. AO in making an addition of Rs.66,90,000/- u/s 68 r.w.s. 115BBE of the Act as income from undisclosed sources. Both the lower authorities have further erred in holding Rs.17,88,94,096/- (Turnover of Rs. 18,53,99,301-cash sales of Rs.66,90,000/-) as actual sales by upholding the above cash sales as alleged unaccounted income.

4. The Ld. CIT(A) has erred both in law and on the facts of the case in confirming the addition in spite of the fact that the Ld. AO did not appreciate necessary supporting documents produced by the Appellant in support of his submissions, which is in violation of the principles of natural justice. Both the lower authorities made such addition relying on limited books of accounts and did not even provide the Appellant further opportunity to submit the same to substantiate his claims.

5. The Ld. CIT(A) has erred both in law and on the facts of the case in rejecting the books of accounts. Moreover, both the lower authorities have without application of mind rejected the books of account and also made an addition u/s. 68 of the Act based on the books of account which is not at all permissible.

6. *Both the lower authorities have passed the orders without properly appreciating the facts and they further erred in grossly ignoring various submissions, explanations and information submitted by the appellant from time to time which ought to have been considered before passing the impugned order. This action of the lower authorities is in clear breach of law and Principles of Natural Justice and therefore deserves to be quashed.*

7. *The Ld. CIT(A) has erred in law and on facts of the case in confirming action of the Ld. AO in levying interest u/s. 234B/C/D of the Act.*

8. *The Ld. CIT(A) has erred in law and on facts of the case in confirming action of the Ld. AO in initiating penalty u/s. 271AAC of the Act.*

9. *The Appellate craves leave to add, amend, alter, edit, delete , modify or change all or any of the grounds of appeal at the time of or before the hearing of the appeal."*

3. When this appeal was called for hearing before the Division Bench of the Tribunal, the ld.counsel for the assessee stated, at the outset, that the Ld.CIT(A) has not adjudicated the appeal of the assessee on merits, and has simply dismissed the appeal *in limine* on the ground that the assessee has not appeared before the Ld.CIT(A). The ld. counsel for the assessee submitted that the Ld. CIT(A) has issued notices of hearing dated 04.07.2023 fixing the date of compliance as upto 12.07.2023. The ld. Counsel for the assessee submitted that on 07.07.2023 , the ld counsel for the assessee filed adjournment application for seeking adjournment to 27.07.2023 on the ground that the ld.counsel for the assessee is busy in filing of the income-tax returns(Page 215-219/PB). It was submitted that ld. CIT(A) did not consider the adjournment application filed by the assessee and dismissed the appeal of the assessee on 14.07.2023 without discussing the issues on merits which is not as per mandate of Section 250(6) of the Act.It was submitted that the appeal of the assessee was dismissed by ld. CIT(A) on the grounds that the

assessee is not interested in prosecuting its appeal. It was submitted that the assessee duly appeared before the AO and had filed all necessary details. The reference is drawn to paper book filed by the assessee containing 219 pages , in which replies filed by the assessee with the AO during the course of assessment proceedings are placed. The ld. Counsel for the assessee prayed that in all fairness , the matter can be set aside back to the file of ld. CIT(A) for fresh adjudication of appeal of the assessee on merits in accordance with law. The ld. Counsel for the assessee submitted that the assessee will co-operate with ld. CIT(A) and furnish all necessary details and explanations called for by ld. CIT(A) in set aside appellate proceedings .

4. The Ld.DR, on the other hand, submitted that the assessee has not appeared before Ld.CIT(A) despite several opportunities been granted to the assessee.However, ld. DR fairly submitted that department has no objection if the matter is restored to the file of ld. CIT(A) for fresh adjudication of appeal of the assessee on merits.

5. We have heard Ld. Representatives appearing for the respective parties. We have perused the relevant material available on record. We are of the considered view that the Ld.CIT(A) has dismissed the appeal of the assessee in limine without passing a reasoned and speaking order , and the appeal was dismissed on the grounds of non prosecution by the assessee. The ld. CIT(A) did not discuss at all the issues involved in the first appeal filed by the assessee with ld. CIT(A) . The operative portion of the appellate order dated 14.07.2023 passed by ld. CIT(A) is reproduced hereunder:

“ The present filed appeal is directed against order u/s 143(3) of the Income Tax Act(herein after referred as ‘Act’) , issued by AO on 30.12.2019 for the assessment year 2017-18.

2. Aggrieved with the order issued by the AO, the appellant has filed present appeal on 28.01.2020 . In the course of appellate proceedings, it is seen that the appellant was issued and served various notices u/s 250 of the Act from this office to present his contentions and any documents supporting them. The said notices were issued right from 2020 through till 2023 and all of them remain un-complied with. The National Faceless Appeal Centre (NFaC) also in November, 2022 enabled communication window to facilitate filing of submissions by the appellant but to no avail.

3. In view of the above, it is clear that the appellant is not interested in prosecuting the present appeal because there has been no response as yet. In view of the above, the appeal stands dismissed.

Thus, the appeal filed by the appellant stand dismissed.”

As per mandate of Section 250(6) , the Id. CIT(A) is required to dispose of the appeal of the assessee on merits, and has to pass reasoned and speaking orders after independent application of his mind. In the instant case, the appeal of the assessee is dismissed by Id. CIT(A) *in limine* without discussing the issue’s on merits at all and, hence, in our considered view, this does not satisfy the mandate of Section 250(6) of the Act. The Id.counsel for the assessee as well as the Ld.DR have both concurred that the matter can go back to the file of Ld.CIT(A) for adjudication afresh of the appeal filed by the assessee on merits in accordance with law. Thus, keeping in view entire material on record and in all fairness, we set aside the appellate order passed by Id. CIT(A), and restore the matter back to the file of Id. CIT(A) for deciding afresh appeal filed by the assessee with Id. CIT(A) on merits in accordance with law, after affording proper opportunity of being heard to both the parties before Id. CIT(A). The assessee is directed to co-

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operate and comply with the notices issued by Ld.CIT(A) in set aside proceedings, and file all necessary details as are called for by the Ld.CIT(A), and the Ld.CIT(A) is directed to pass a reasoned and speaking order on the issues involved in the appeal, after providing reasonable opportunity of being heard to both the parties before Ld. CIT(A). We clarify that we have not commented on the merits of the issues involved in this appeal filed by the assessee with Tribunal. Thus, in nut-shell, this appeal filed by the assessee is allowed for statistical purposes. We order accordingly.

6. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in Open Court on 17th January, 2024 at Ahmedabad in the presence of both the parties, and reduced to writing and signed on 19 January, 2024

**Sd/-
(SUCHITRA RAGHUNATH KAMBLE)
JUDICIAL MEMBER**

**Sd/-
(RAMIT KOCHAR)
ACCOUNTANT MEMBER**

Ahmedabad, Dated 19/01/2024

टी.सी.नायर, व.नि.स./T.C. NAIR, Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-(NFAC), Delhi
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण , राजकोट/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, ITAT, Ahmedabad