

आयकर अपीलीय अधिकरण
कोलकाता 'बी' पीठ, कोलकाता में
IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'B' BENCH, KOLKATA

श्री राजपाल यादव, उपाध्यक्ष (कोलकाता क्षेत्र)

एवं

डॉ. मनीष बोरद, लेखा सदस्य

के समक्ष

Before

SRI RAJPAL YADAV, VICE PRESIDENT

&

DR. MANISH BORAD, ACCOUNTANT MEMBER

I.T.A. No.: 522/KOL/2023

Assessment Year: 2011-12

Dreamz Vanijya Pvt. Ltd......*Appellant*
[PAN: AACCD 7057 K]

Vs.

ITO, Ward-1(2), Kolkata.....*Respondent*

Appearances:

Assessee represented by: *Sh. Miraj D. Shah, A/R.*

Department represented by: *Sh. Abhijit Kundu, CIT.*

Date of concluding the hearing : January 24th, 2024

Date of pronouncing the order : February 8th, 2024

ORDER

Per Rajpal Yadav, Vice-President (KZ):

The present appeal is directed at the instance of the assessee against the order of the Commissioner of Income Tax (Appeals)-NFAC, Delhi [in short ld. 'CIT(A)'] dated 31.03.2022 passed for AY 2011-12.

2. The assessee has taken four grounds of appeal out of which ground no. 4 is a general ground which does not call for recording of any specific finding.

3. The common issue raised by the assessee in rest of three grounds is that ld. CIT(A) has erred in confirming the addition at Rs. 43.75 Crore by passing an *ex-parte* order.

4. The brief facts of the case are that assessee has filed its return of income on 26.09.2011 disclosing an income of Rs. 15,850/-. The Assessing Officer (in short ld. 'AO') has observed that he received information that cash was deposited in the accounts of M/s. S.K. Enterprises, M/s. Ashish Enterprises and M/s. Gokul Commodities Pvt. Ltd. These companies were managed by one Sh. Sanjay Agarwal. According to the AO, the cash deposit in these companies was layered through multiple accounts to reach the ultimate beneficiaries in the form of share capital and share premium. He observed that assessee is one of the beneficiaries and therefore, assessment of the assessee deserves to be re-opened. Accordingly, he re-opened the assessment and commenced the enquiry. The assessee wrote one letter to the AO for supply of reasons which according to the AO was given to the assessee on its e-mail. The AO has passed an *ex-parte* assessment order and made addition of Rs. 43.75 Crore.

5. Appeal to ld. CIT(A) did not bring any relief to the assessee.

6. The ld. Counsel for the assessee while impugning the orders of Revenue authorities, took us through paragraph 4 of the assessment order. He submitted that information u/s 133(6) of the Act was called for by the AO from the alleged creditor/share applicant of the assessee company. This information was to be submitted 26.11.2018. According to the AO, the information was not received. He placed on record copy of the replies sent by these companies to the AO. On the strength, of this material he contended that finding of the AO is factually incorrect.

7. The ld. Counsel for the assessee thereafter, took us through paragraph no. 4 of ld. CIT(A)'s order and submitted that ld. first appellate authority has not given any opportunity to argue the appeal because only one show cause notice has been issued fixing the appeal for hearing and that notice is a conditional one which has been reproduced by the ld. first appellate authority itself. Therefore, neither before the AO nor before ld. CIT(A) an opportunity of hearing was granted to the assessee.

8. Ld. D/R on the other hand, relied upon the orders of Revenue authorities. He submitted that assessee never cooperated with the Department, never submitted the details well in time. Therefore, under the compelling circumstances, assessment was to be completed.

9. We have duly considered the rival contentions and gone through the record carefully. We find that the AO has not put any date on the assessment order though date of the assessment order is discernible from the impugned order of ld. CIT(A) which mentioned as 17.12.2018. The reply to the show cause notice issued u/s 133(6) of the Act was given by the share applicants dated 24.12.2018 which was received in the office of the AO on 24.12.2018. It appears that this reply did not reach to the AO before the passing of the assessment order. The ld. CIT(A) in paragraph no. 8 has recorded a finding that show cause notice was issued to the assessee on 10.12.2018 requesting it to submit reply by 13.12.2018. Since no reply was submitted, therefore, the AO has passed the order on 17.12.2018.

10. Before ld. CIT(A), the proceeding has undergone in this manner:

“4. A hearing notice dated 12.01.2021 was subsequently sent to the appellant calling for a detailed rebuttal, if any, in the following manner:

If you are not opting for Vivad Se Vishwas Scheme 2020, then in support of your Grounds of Appeal, you are requested to furnish or cause to be furnished Ground-wise written submissions, along with supporting documentary evidence(s) and/or documents as specified in the attached Annexure, if any, and if not already submitted electronically on the E-filing portal.

5. No reply to this notice was received from the appellant. No adjournment was sought. Clearly, the appellant has nothing more to add to what it had already submitted in Form No.35.”

11. A perusal of the impugned order would suggest that neither the AO nor ld. CIT(A) had ever granted substantial opportunity of hearing to the assessee. It is not discernible from the assessment order as to when ld. AO has commenced the assessment proceeding. He has issued notice u/s 148 of the Act on 29.03.2018. In response to that notice, assessee filed return on 24.04.2018 and thereafter, according to the AO, he issued a notice u/s 143(2)

of the Act on 27.08.2018. Thereafter, proceeding remained dormant and all of a sudden, the AO issued notice u/s 133(6) of the Act to the share applicants inviting their explanation. He has granted only six days time without ensuring when these notices will be served upon those applicants and how they will be in a position to respond to the AO. Therefore, we are of the view that the AO has concluded the proceeding without seriously examining any aspect.

12. If we take note of ld. CIT(A)'s order then it would reveal that only one notice alleged to have been issued vide which it was enquired whether assessee is opting VSV Scheme 2020 or not. This notice was issued in January, 2021 when COVID pandemic was at its peak.

13. One Sh. Ashok Prasad has filed an affidavit deposing therein that he is looking after tax affairs of the company and he has never received any notice by the ld. CIT(A) before disposal of this appeal.

14. Taking note of all these facts, we are of the view that ends of justice will meet if we grant one more opportunity to the assessee to submit all the details. Therefore, we set aside both the orders and restore this issue to the file of the AO for re-adjudication. The ld. AO shall grant sufficient time to the assessee for submitting requisite details and also commence investigation, if any, well in advance. The assessee will be at liberty to raise all jurisdictional aspect which has been raised in this appeal but not taken up for the purpose of deciding the preliminary issue of opportunity only. With the above observation the impugned orders are set aside and appeal is allowed for statistical purposes.

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

Kolkata, the 8th February, 2024.

Sd/-

[Manish Borad]

Accountant Member

Dated: 08.02.2024

Bidhan (P.S.)

Sd/-

[Rajpal Yadav]

Vice President

Copy of the order forwarded to:

1. **Dreamz Vanijya Pvt. Ltd., 39, Ambazari Layout, Nagpur, 1st Floor, Nagpur-440 010.**
2. **ITO, Ward-1(2), Kolkata.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

//True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata