

**IN THE INCOME TAX APPELLATE TRIBUNAL "E" BENCH, MUMBAI**

**BEFORE SHRI BR BASKARAN, AM SHRI ABY T. VARKEY, JM AND**

आयकर अपील सं/ I.T.A. No. 3326/Mum/2023

(निर्धारण वर्ष / Assessment Year: 2012-13)

Heena Textile Ltd Office No. 301, B-65, Standford Plaza, New Link Road, Opp Citi Mall, Nr. Morya House, Mumbai- 400053.	<b>बनाम/</b> Vs.	ITO-4(2)(3) Aaykar Bhawan, Mumbai-400020.
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AACCH0454N</b>		
(अपीलार्थी / Assessee)	..	(प्रत्यर्थी / Respondent)

Assessee by:	None
Revenue by:	Shri P. D. Chogule (DR)

सुनवाई की तारीख / Date of Hearing: 29/01/2024

घोषणा की तारीख /Date of Pronouncement: 31/01/2024

**आदेश / ORDER**

**PER ABY T. VARKEY, JM:**

This is an appeal preferred by the assessee company against the order of the Ld. CIT(A)/NFAC, Delhi dated 27.07.2023 for the AY. 2012-13.

2. The assessee has challenged the action of the Ld. CIT(A) sustaining the disallowance of expense to the tune of Rs.12,30,870/- which according to the assessee was incurred during the normal course of business. The assessee is also aggrieved by the action of the Ld. CIT(A) confirming the action of the AO making an addition of Rs.2,73,97,900/- u/s 68 of the Income Tax Act, 1961 (hereinafter "the Act").

3. None appeared for the assessee. It is noted that the impugned order of the Ld. CIT(A)/NFAC was an *ex-parte* order. It is also noted that the assessment order has been framed u/s 144 of the Act on



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25.03.2015 (*i.e. Best judgment assessment*), wherein the AO has made the following additions/disallowance (i) disallowance u/s 37 of the Act of Rs.12,30,870/-, (ii) unexplained investments u/s 69 of the Act of Rs.89,09,854/- and (iii) unexplained cash credit u/s 68 of the Act of Rs.2,73,97,900/- [total addition of Rs.3,75,38,624/-]. And thus, total income was computed at of Rs.3,78,05,280/- (ROI-Rs.2,66,659/- + Rs.3,75,38,624/-). Aggrieved, the assessee preferred an appeal before the Ld. CIT(A) who noticed that during the appellate proceedings, the hearing was fixed on seven (7) occasions (*from 14.09.2018 to 07.07.2023*) and since none responded on behalf of assessee on the dates fixed for hearing of appeal, and no adjournment was sought, the Ld. CIT(A) proceeded to dispose of the appeal *ex parte* qua the assessee.

4. The Ld. CIT(A) has confirmed the action of the AO disallowing expense to the tune of Rs.12,30,870/- since the assessee did not file any details before the Ld. CIT(A)/AO to substantiate that expenses claimed were laid out or expended wholly and exclusively for the purpose of business or profession and not for capital or personal expenses of the assessee. Thereafter, the Ld. CIT(A) noted that AO has made an addition u/s 69 of the Act to the tune of Rs.89,09,854/- since there has been increase in “*loan and advances*” as compared with of the earlier years (*loans and advances as on 31.03.2011 was Rs.2,04,12,294/- whereas it increased to Rs.2,93,22,148/- as on 31.03.2012*). According to the AO, since the assessee omitted to file any details regarding the increase of “*loans and advances*” and he



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could not verify the source of the increase in loan, and taking note that the assessee is not into the business of money lending, the AO treated the increase of Rs.89,09,854/- as unexplained investment u/s 69 of the Act and made an addition of the same. However, the Ld. CIT(A) noted that section 69 of the Act will be applicable only if the assessee has made investments which are not recorded in the books of account, if any, maintained for any source of income, and the assessee offers no explanation about the nature and source of the investments or the explanation offered is not, in the opinion of the AO, satisfactory; and not otherwise. In the present case, according to Ld. CIT(A) it is discernable that such entries had been recorded in books of accounts and disclosed in audited balance sheet by the assessee as loan & advances and therefore, it cannot come under the ambit of section 69 of the Act. The Ld. CIT(A) also noted that AO has neither rejected the books of accounts nor has the AO established that such “*loan and advances*” were paid in cash outside the books. In the facts of the case, he presumed that such loans and advances were given through banking channels and the source is from the capital of the assessee as reflected in the books of accounts of the assessee which has not been rejected by the AO. Moreover, the Ld. CIT(A) noted that the AO has also made an addition on account of unsecured loans of Rs 2,73,97,900/- during the year and therefore according to him, it is likely that the assessee had sufficient funds for such “*loan and advances*” and this has not been considered by the AO. As such, the addition on this ground according to him, is not sustainable and the addition of Rs 89,09,854/- was



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directed to be deleted [*and the Revenue has not assailed this decision of Ld CIT(A)*].

5. Thereafter, the Ld. CIT(A) noted that the AO has made an addition u/s 68 of the Act, the unsecured loan shown by assessee to the tune of Rs.2,73,97,900/-. According to the AO, since the unsecured loan has been received by assessee during the relevant year and in the absence of any details to verify the source of the unsecured loan received, he added the amount of Rs.2,73,97,900/- u/s 68 of the Act. The Ld. CIT(A) has confirmed the addition since assessee failed to prima facie prove the identity of the creditors, genuineness of the transaction and the creditworthiness of the creditors. Thus, the Ld. CIT(A) has sustained the addition of Rs.2,73,97,900/- and disallowance of Rs.12,30,870/-. Aggrieved by the aforesaid action of the Ld. CIT(A), the assessee is before us.

6. Having heard the Ld. DR and after perusal of the records, we note that the Ld. CIT(A) has passed an *ex parte* order after fixing the appeal for hearing on seven (7) occasions. We note that the Ld. CIT(A) has fixed the appeal on three (3) occasions (*i.e. on 28.06.2021, 18.10.2021 & 17.01.2022*) which falls during Covid-19 Pandemic. From the records, it is noted that the assessee pleaded before the Ld. CIT(A) that there was bonafide reason which precluded the assessee from attending the assessment proceedings, which resulted in him passing an *ex parte* order. And considering the fact that the Ld. CIT(A) has also passed the *ex parte* order, and taking note that the additions



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have been made/sustained mainly for non-furnishing of relevant documents/details, therefore for the interest of the justice and fair play, we are inclined to give one more opportunity to the assessee and remand back to the Ld. CIT(A) regarding the two additions sustained by him i.e. disallowance of Rs.12,30,870/- and Rs. 2,73,97,900/-. And the assessee is directed to be diligent and file written submission/relevant documents to support its grounds of appeal raised before Ld CIT(A) regarding these two additions, and assessee may request Ld. CIT(A) for hearing if it desires as per Rules, and the Ld. CIT(A) to pass orders in accordance to law after hearing the assessee.

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

Order pronounced in the open court on this 31/01/2024.

Sd/-  
(BR BASKARAN)  
ACCOUNTANT MEMBER

Sd/-  
(ABY T. VARKEY)  
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 31/01/2024.  
Vijay Pal Singh, (Sr. PS)



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

1. अपीलार्थी / The Assessee
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
5. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

सत्यापित प्रति //True Copy//

**उप/सहायक पंजीकार /(Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**