

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G" MUMBAI

BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI SANDEEP SINGH KARHAIL (JUDICIAL MEMBER)

ITA No. 2612/MUM/2023
Assessment Year: 2014-15

Standard Ganpati Merchandise
Pvt. Ltd.,
254-B, No. 5, Sanjya Building
Mittal Industrial Estate, Andheri
Kurla Road, Andheri East,
Mumbai-400059.

PAN NO. AAKCS 1573 M
Appellant

Vs.

Commissioner of Income Tax
Appeals,
National Faceless Appeal
Centre, New Delhi.

Respondent

Assessee by : Mr. Subhash C Jalan
Revenue by : Mr. Manoj Kumar Singh, Sr. DR

Date of Hearing : 12/02/2024
Date of pronouncement : 12/02/2024

ORDER

PER OM PRAKASH KANT, AM

This appeal by the assessee is directed against order dated 30.05.2023 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)'] for assessment year 2014-15, raising following grounds:

1. The Learned Commissioner of Income-Tax (Appeals) [“Ld. CIT (Appeals)”] has erred in law and facts on records in dismissing the Assessee's appeals on all three Grounds primarily due to non-submission of written arguments by the Appellant in response to his notices. It is submitted that those notices had gone to assessee's 'Spam' folder and hence could not be attended.



On Merits

2. The Ld. CIT (Appeals) has erred in law and facts on records in dismissing the Assessee's appeal by upholding the disallowance of Rs.17,141/- out of rent, which is the aggregate of 2 months' rent i.e., April & May'13 and the component of service tax thereon.

3. The Ld. CIT (Appeals) has erred in law and facts on records in dismissing the Assessee's appeal by upholding the disallowance of Rs. 3,15,600/- out of travelling expenses, made on adhoc basis of 20% by wrongly considering as personal expenses despite the fact that the appellant is a corporate entity and no element of 'personal nature' is involved nor there is any qualification in audited financial statements or tax audit report.

4.1 The Ld. CIT (Appeals) has erred in law and facts on records in dismissing the Assessee's appeal by upholding the ITO's action of addition u/s 68 of Rs. 25,60,500/- being 75% of cash withdrawal from Yes Bank on different dates, which was re-deposited into same bank on different dates based on requirement or no-requirement for business. The addition so made is purely on ITO's assumption as stated in assessment order, which has been upheld by the Ld. CIT (appeals).

4.2 The decision relied on by Ld. CIT (Appeals) in case of Dinesh Kumar Jain vs. PCIT 407 ITR 65 (Del.) is not applicable to the facts of the Appellant's case because in that case, there were incongruities in the cash flow statement, while in the Appellant's case there is no incongruity at all in cash flow statement w.r.t. dates of cash withdrawals and deposits.

2. At the outset, before us, the Ld. counsel for the assessee submitted that the notices issued by the Ld. CIT(A) through e-mail had gone to the assessee's 'spam folder' of e-mail and hence, the assessee could not appear before the Ld. CIT(A). Accordingly, the Ld. CIT(A) decided the appeal *ex-parte* without taking into consideration submission of the assessee. He prayed that matter may be restored back to the file of the Ld. CIT(A) for deciding afresh.

3. We have heard rival submission of the parties and perused the relevant material on record. We have also perused the printout of



the 'spam folder' wherein the e-mail from the e-mail address namely dontreply@incometax.gov.in received on 05.11.2013, is appearing in 'spam folder'.

3.1 In view of the above evidence, it is clear that the assessee could not timely access to the notices issued by the Income-tax Department. In our opinion, there is a justified reason for not responding to the notices issued by the Ld. CIT(A). Since, the Ld. CIT(A) has decided the issue in dispute raised in the grounds of appeal before him without taking into consideration submission of the assessee, therefore, we feel appropriate to set-aside the finding of Ld CIT(A) and restore this appeal back to the Ld. CIT(A) for deciding afresh after taking into consideration submission of the assessee. The ground No. 1 of the appeal of the assessee is accordingly allowed.

4. The other grounds related to merit of the additions are therefore, accordingly allowed for statistical purposes.

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

Order pronounced in the open Court.

Sd/-
(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai;
Dated: 12/02/2024



Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai