

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES, "SMC" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं डा० मीठा लाल मीना, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & DR MITHA LAL MEENA, AM

आयकर अपील सं./ITA No. 806/JP/2023
निर्धारण वर्ष / Assessment Year : 2017-18

M/s. Star Valley Heights LLP 707, Soni Paris Point Collectorate Circle, Bani Park, Jaipur	बनाम Vs.	The ITO Ward 3(2) Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ACVFS 1713 R		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Saurav Harsh, Adv.
राजस्व की ओर से / Revenue by: Mrs. Monisha Choudhary, Addl CIT-DR

सुनवाई की तारीख / Date of Hearing : 01/02/2024
उदघोषणा की तारीख / Date of Pronouncement: 06 /02/2024

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

This appeal filed by the assessee is directed against order of the ld. CIT(A) dated 16-10-2023, National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] for the assessment year 2017-18 wherein the assessee has raised the following grounds of appeal.

“1. That on the facts and circumstances of the case, the ld. CIT(A) grossly erred in passing the ex-parte order and confirming the addition made by the AO vide order passed un 143(3) of the Act.

2. That in law and on the facts and in the circumstances of the case, the AO grossly erred in making the addition of Rs.17,40,000/- u/s 115BBE .

3. That on the facts and in the circumstances of the case and the AO grossly erred in making addition of Rs.17,91,000/- for the amount received as loan from partners.

4. That on the facts and in the circumstances of the case, the AO grossly erred in making addition of Rs.5,12,040/- on account of notional interest on interest free loan and advances given by the assessee.”

2.1 At the outset of the hearing, the Bench noted that there is delay of 17 days in filing the appeal by the assessee for which the assessee filed an application for condonation of delay praying therein as under:-

“The humble assessee appellant applicant respectfully prays for the condonation of delay in the filling of appeal before the Hon'ble Tribunal for the following reason:

1. That the Id. CIT (Appeals) passed his order on 06.10.2023 which was uploaded on the Income tax India E filing Portal on the very same date and appeal were to be filed before the Hon'ble Tribunal on or before 5th December 2023.

2. That the assessee appellant is a Partnership Firm registered under the Limited Liability Partnership Act 2008 and regularly filing its Income tax Return.

3. That subsequent to the passing of the order u/s 250 by the Id. CIT(A), the Accountant of the Firm who look after the tax matters and other compliances left the Firm and due to oversight and mistake the action to file appeal before the Hon'ble Tribunal could not be taken.

4. The order received from the Id. CIT(A) was issued on the email id i.e. starvalleyaegina@gmail.com which was also under the access of the earlier Accountant.

5. That passing of order dated 06.10.2023 by the Id. CIT(A) was came to the knowledge of the assessee when the notice of demand was issued to the assessee and after that the assessee with the help of counsel check the portal of the Income tax India e-filing and there he finds the order dated 06.10.2023 passed u/s 250 of the Act.

6. That further on the advice of the counsel of the assessee, the appeal was filed without any further delay before the Hon'ble ITAT. That due to non-availability and no communication of the accountants with the assessee appellant who were looking after the tax matters the appeal could not be filed within limitation and the delay of 17 days occurred in filing of appeal.

7. An Affidavit of the partner of the Firm Shri Mayank Tyagi in support of the afore-said submission duly sworn in this regard is also enclosed herewith.

With this background, we request your honour to take stock of the situation in totality, take a lenient and human approach towards the humble assessee appellant as the delay was not intentional and due to unavoidable circumstances and lack of communication and lack of the information regarding income tax proceedings. The assessee shall be vigilant in future.

That in these circumstances we request your honour's to kindly condone the delay and oblige.”

To this effect, the assessee has filed an affidavit deposing the above facts.

2.2 On the other hand, the Id. DR objected to such delay in filing the appeal by the assessee.

2.3 We have heard both the parties and perused the materials available on record. The bench noted that there is a merit in the submission of the assessee and thus the delay so made in filing the appeal by the assessee is condoned.

3.1 Apropos Ground 1 to 4 of the assessee, it noted that the Id. CIT(A) has dismissed the appeal on the ground that the assessee is not desirous of pursuing the grounds of appeal in spite of providing more opportunities to the assessee. The observations of the Id. CIT(A) as to dismissing the appeal of the assessee are mentioned as under:-

“4. The facts of the case, in brief, are that the appellant filed the return of income for the AY 2017-18 on 31/03/2018, declaring total loss at (-) Rs. 27,01,137/-. The case was selected in the scrutiny under CASS and the AO issued notice u/s 143(2) on 28/08/2018. The AO completed the assessment u/s. 143(3) on 26/12/2019, determining the assessee's total loss at (-) Rs. 1,38,095/- by making addition of Rs. 19,91,000/- u/s 41(1) of the Act, disallowance of interest expenses of Rs. 5,12,040/- on loans and advances given without charging any interest, disallowance of Rs. 60,002/- u/s 40(a)(ia) of the Act and addition of Rs. 17,40,000/- as unexplained cash credit u/s 68 of the Act to be taxed @60% as per provisions of section 115BBE of the Act. Aggrieved, the appellant filed the present appeal, as mentioned in Para 3 above.

5. After introduction of Faceless Appeal Scheme with effect from 25/09/2020, fresh notices u/s 250 of the Act were issued on various dates as mentioned in Para 1.1 above. On all these occasions, the appellant neither made any written submissions nor filed any application seeking adjournment. After enabling the window for communication with the CIT(A), by the NFAC with effect from 07/11/2022 also, no communication has been received from the appellant till date. Considering the above facts, it is clear that, in this

case, sufficient number of opportunities have already been granted to the appellant, which the appellant has failed to avail. It may also be noted that this is an old appeal, filed before 01/04/2020, and is to be disposed off on priority basis as per Para 4.2.2(III) of Central Action Plan 2023-24. Under these facts and circumstances, where the appellant's consistent non-compliance and indifference to the appellate proceedings is abundantly manifest, I do not have any alternative but to decide the appeal on the basis of facts available in grounds of appeal and assessment order of the Assessing Officer. Hence, the appeal is being decided ex-parte on the basis of material available on record.

6. In the grounds of appeal, the appellant has objected to the AO's action in making addition of Rs. 19,91,000/- u/s 41(1) of the Act, disallowance of interest expenses of Rs. 5,12,040/- on loans and advances given without charging any interest, disallowance of Rs. 60,002/- u/s 40(a)(ia) of the Act and addition of Rs. 17,40,000/- as unexplained cash credit u/s 68 of the Act to be taxed @60% as per provisions of section 115BBE of the Act. As mentioned above, the appellant failed to furnish any written submissions in support of the grounds taken in appeal. The AO has discussed the reasons for making the addition but no explanation has been submitted by the appellant to controvert the findings of the AO. The appellant has made various claims in the statements of facts but in the absence of written submissions, in response to notices issued by this office u/s. 250 of the Act, these claims remain unsubstantiated. It seems that the appellant is not interested in pursuing the present appeal.

7. It is clear from the discussion in para nos. 5 & 6 above that the appellant is not desirous of pursuing the grounds of appeal though more than adequate opportunities were provided. Under these circumstances, I have no other alternative but to uphold the order the AO and dismiss the appeal following the ratio of the decision of the Hon'ble ITAT, Delhi Bench in the case of CIT Vs. Multiplan India Limited reported in 38 ITD 320 and also the decision of the Hon'ble MP High Court in the case of Estate of Late Tukhoji Rao Holkar Vs. CWT reported in 233 ITR 480. The law assists only those who are vigilant with their rights and not those who sleep over their rights. Following this principle as embodied in the well known dictum

"vigilantibus non dormientibus, jura subveniunt, all the grounds raised in this appeal as reproduced in para 2 supra are dismissed.

8. In the result, the appeal is dismissed.’’

3.2 During the course of hearing the ld. AR of the assessee prayed that one more chance should be given to the assessee to contest the case before the ld CIT(A).

3.3 On the other hand, the ld. DR supported the order of the ld. CIT(A).

3.4 We have heard both the parties and perused the materials available on record. It is noticed that the ld. CIT(A) has passed an ex-parte order on the ground of non-appearance before him and thus assessee remained deprived off to contest the grounds of appeal before him. The Bench further noted that the assessee neither submitted any documentary evidence or written submission in connection with his appeal before the ld CIT(A) to counter the same which indicates that the assessee is lethargic and not serious to pursue its case before the lower authorities in spite of multiple opportunities by the lower authorities. It is undisputed fact that the assessee was granted several opportunities by the ld. CIT(A) as mentioned in the ld.CIT(A)'s order to argue the case but the assessee remained non-cooperative and negligent in pursuing its case on the dates of hearing of the appeal for which the Bench awards cost of Rs.2,000/- and the same may be deposited in the Prime Minister Relief Fund and copy of the same shall be submitted to the ld. CIT (A) for proof and thus the appeal of the assessee is restored to the file of the ld. CIT(A) to

decide it afresh by providing one more opportunity of hearing, however, the assessee will not seek any adjournment on frivolous ground and remain cooperative during the course of proceedings. Thus the appeal of the assessee is allowed for statistical purposes.

3.5 Before parting, we may make it clear that our decision to restore the matter back to the file of the Id. CIT(A) shall in no way be construed as having any reflection or expression on the merits of the dispute, which shall be adjudicated by Id. CIT(A) independently in accordance with law.

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

Order pronounced in the open court on 06 /02/2024.

Sd/-

Sd/-

(डा० मीठा लाल मीना)
(Dr. Mitha Lal Meena)
लेखा सदस्य / Accountant Member

(संदीप गोसाईं)
(Sandeep Gosain)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 06/02/2024

*Mishra

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

1. The Appellant- M/s. Star Valley Heights LLP
2. प्रत्यर्थी / The Respondent- The ITO , Ward 3(2), Jaipur
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 806/JP/2023)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar