

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. 3463/MUM/2023
Assessment Year: 2013-14

Sai Granite Exoperters &
Developers Pvt Ltd
73 Mumbai Samachar Marg,
Fort Mumbai- 400023.
PAN No. AACCS7798C
Appellant

National Faceless
Assessment Centre, Delhi
Vs.
Respondent

Assessee by : Shri. Vijaykumar Tiwari
Revenue by : Shri. Manoj Kumar Singh, SR.AR

Date of Hearing : 14/02/2024
Date of pronouncement : 14/02/2024

ORDER

PER OM PRAKASH KANT, AM

This appeal by the assessee is directed against order dated 01.08.2023 passed by the Ld. Commissioner of Income Tax(Appeals)-National Faceless Assessment Centre, Delhi[In short the Ld CIT(A)] for assessment year 2013-14, raising following grounds:-

1 On the facts and circumstances of the case and law on the subject, the learned Assessing Officer erred in passing penalty order u/s 271(1) (C) of the Income Tax Act without providing sufficient order opportunity being heard & violating the rule of natural justice and the learned Commissioner of Income Tax (Appeal) erred in upholding the action of the learned AO



without correct appreciation of facts and law on the subject. Hence the penalty order passed u/s 271(1)(c) of the Income Tax Act be quashed.

2. On the facts and in the circumstances of the case and law on the subject, the learned assessing officer erred in levying penalty of Rs.30,59,085/- u/s 271(1) (c) of the Income Tax Act, 1961 vide order dated 30.12.2021 and the learned CIT(Appels) erred in upholding the action of the learned AO, without correct appreciation of facts and law on the subject.

In view of the facts and circumstances of the case and law on the subject, the order u/s 271(1) (c) be quashed.

3. The appellant craves leave to add, amend, alter or delete any ground of appeal on or before the date of hearing

2. At the outset, the Ld. Counsel for the assessee submitted that the impugned order has been passed by the Ld. CIT(A) ex-parte qua the assessee without considering the submission of the assessee. He submitted that the due to management dispute in the assessee company, no representation could be made before the Ld. CIT(A) from the assessee side. He further submitted that the company is engaged in the business of hotel & restaurant and it has suffered a substantial loss during COVID-19 pandemic. He accordingly submitted that assessee is willing to file submission and representation before the Ld. CIT(A) ,therefore, matter might be restored back to the file of the Ld.CIT(A) for deciding afresh.

3. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. The finding of the Ld. CIT(A) is reproduced as under:-

4. During the course of appellate proceedings vide notices dated 15.11.2022, 06.06.2023 and the final opportunity was given on 18.07.2023 and requested the appellant to file the submission by 25.07.2023. However no submissions were made during the entire appellate proceedings. The appellant during the appellate proceedings did not comply with the



notices and hence made no submission in support of grounds of appeal. So it is held that the appellant had nothing more to submit except for raising the ground.

4.1 The Hon'ble ITAT in ITA No. 1025-1027/Chandi/2005 for the A.Y. 2002-03 in the case of M/s Chhabra Land and Housing Ltd. after following the decision of Hon'ble Supreme Court in the case of B.N. Bhattachargee, 118 ITR 461 (SC) held that the appeal does not mean merely filing of the appeal but effectively pursuing it. Keeping in view of the aforesaid factual position, the appeal filed by the appellant is, therefore, decided on merits.

5. In the instance of the case the appellant failed to make any submissions in support of grounds of appeal, this gives rise to an undisputable conclusion that the assessee has got nothing more to say in this regard. I have gone through the record before me and based on the record I have decided to adjudicate the issue on the merits of the case. In the instant case the AO has rightly levied a penalty of Rs. 30,59,085/-. Since the appellant failed to substantiate appellant's claim and addition made by the Assessing Officer of Rs. 30,59,085/- is hereby confirmed.

4. Since, the Ld. CIT(A) has decided appeal *ex-parte* in absence of submission from the assessee side, without any discussion on merit of the matter involved. Under provisions of section 250(6) of the Act, the Ld. CIT(A) is required to pass a reasoned order on merit even in cases of no representation on behalf of the assessee, therefore, we feel it appropriate to set-aside the order of Ld CIT(A) and restore the issue-in-dispute involved in the appeal back to the file of the Ld. CIT(A) for deciding afresh after taking into consideration submission of the assessee. The grounds of the appeal are accordingly allowed for statistical purposes.

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



Order pronounced in the open Court on 14/02/2024.

Sd/-
(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai;
Dated: 14/02/2024
Shubham P. Lohar

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