

**IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH KOLKATA
BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.762/Kol/2023
Assessment Year: 2011-12**

Balaji Construction Pvt. Ltd. 82, Bentinck Street, Ground Floor, Kolkata-700001. (PAN: AACCB3820C)	Vs.	Income Tax Officer, Ward- 5(4), Kolkata.
(Appellant)		(Respondent)

Present for:

Appellant by : Shri Miraj D. Shah, AR
Respondent by : Shri Anup Biswas, Addl. CIT

Date of Hearing : 21.02.2024
Date of Pronouncement : 21.02.2024

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi vide order No. ITBA/NFAC/S/250/2023-24/1053698087(1) dated 14.06.2023 passed against the assessment order by ITO, Ward-5(4), Kolkata u/s.143(3)/147 of the Income-tax Act, 1961 (hereinafter referred to as the "Act"), dated 31.12.2018 for AY 2011-12.

2. The assessee has raised the following grounds of appeal:

"1 That the Order passed u/s 250 of I.T. Act, 1961 is bad in law as well as on facts of the case.

2. That the Hon'ble CIT(A), NFAC erred in law as well as on facts of the case by not quashing the Order passed u/s 143(3)/147 on the fact that the reasons recorded for reopening the case u/s 148 was erroneous and non-existent.

3. That the Hon'ble CIT(A), NFAC erred in law as well as on facts of the case by confirming the additions in respect of alleged amount received from M/s

SSP Vyapaar to the tune of Rs 2000000/- even though no such amount was received in the bank account of the assessee company.

4. That the Hon'ble CIT(A), NFAC erred in law as well as on facts of the case by confirming the additions in respect of alleged amount received from M/s SSP Vyapaar to the tune of Rs 2000000/- by invoking the provisions of Section 68 of Income Tax Act, 1961

5. That the appellant craves to leave, add, amend or adduce any of the grounds of appeal during the course of appellate proceedings.”

3. Assessee filed its return of income on 31.01.2012 reporting total income of Rs.2,709/-. Case of the assessee was reopened u/s. 147 of the Act for which statutory notices were issued and served on the assessee. According to the Ld. AO, an amount of Rs. 20 lakh to which the information pertained for the purpose of reopening remained unexplained and undisclosed. From the perusal of order of assessment, Ld. AO has noted in a very vague and general term that reasons recorded for reopening of the case were discussed and explained. Assessee had furnished statement of accounts which were examined and verified. Ld. AO observed that the assessee filed bank statement pertaining to State Bank of India in which no transaction took place. According to him, on verification of the documents, it was found that the transaction was made on a different bank account namely, Indus Ind Bank, Burrabazar Branch. According to Ld. AO, bank account of Indus Ind Bank, Burabazar, Kolkata remained undisclosed in the return filed by the assessee. He thus, completed the assessment by making the said addition of Rs.20 lakh.

3.1. Aggrieved, assessee went in appeal before the Ld. CIT(A). Before the Ld. CIT(A), a written submission was furnished on 24.09.2019 which is mentioned in para 5.1 of the order of Ld. CIT(A). Appeal of the assessee was dismissed by observing that assessee does not wish to pursue the appeal and thus, was dismissed on account of non-prosecution without taking into consideration the written submission

furnished by the assessee. Aggrieved, assessee is in appeal before the Tribunal.

4. Before us, ld. Counsel for the assessee pointed from the order of Ld. CIT(A) that a written submission was furnished which has not been considered while disposing the appeal and, therefore, the matter may be remitted back to the file of Ld. CIT(A) to pass a speaking order after taking into consideration the submissions made by the assessee. On confrontation of this to the Ld. Sr. DR, nothing objectionable was submitted.

5. We have heard the rival contentions and perused the material available on record. We do find that assessee had furnished its reply before the Ld. CIT(A) which has not been considered while disposing the appeal. Further, we have perused the order of Ld. AO wherein the conclusions drawn are not general and vague in nature. From the order, it is noted that the assessee was confronted with the information in respect of transaction made in the bank account with Indus Ind Bank, Burrabazar, Kolkata. It is also not discernible what was the reason to believe which was recorded for the purpose of reopening of the matter u/s. 147 vis-à-vis the conclusion drawn by the Ld. AO and treating the bank account of Indus Ind Bank, Burrabazar, Kolkata as undisclosed in the return filed by the assessee. Considering the general observations and incomplete information contained in the assessment order, we find it more appropriate to remit the matter back to the file of Ld. AO as against what is prayed by the Ld. Counsel, for de novo adjudication of the matter. We direct the AO to provide reasons to believe recorded for the purpose of reopening u/s. 147 and provide reasonable opportunity of being heard to the assessee to make its submissions and explanations

to substantiate the claim. Accordingly, appeal of the assessee is allowed for statistical purpose.

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

Order is pronounced in the open court on 21st February, 2024

Sd/-
(Rajpal Yadav)
Vice President

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 21st February, 2024

JD, Sr. P.S.

Copy to:

1. The Appellant:
 2. The Respondent.
 3. CIT(A), NFAC, Delhi
 4. CIT
 5. DR, ITAT, Kolkata Bench, Kolkata
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By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata