

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

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
AND
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.3716/M/2023
Assessment Year: 2013-14**

M/s. Muniraj Synthetics (I) Pvt. Ltd., Gala No.7, 2 nd Floor, Building No.Y-2, Shree Arihant Complex, Kalher, Bhiwandi, Dist. Thane – 421 302 PAN: AAACR1948R	Vs.	Dy. Commissioner of Income Tax, Circle – 10(2)(2), R.No.213, Aayakar Bhavan, M.K. Road, New Marine Lines, Mumbai – 400 020
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Reepal G. Tralshawala, A.R.
Revenue by : Shri S. Arunkumar, D.R.

Date of Hearing : 27 . 02 . 2024
Date of Pronouncement : 29 . 02 . 2024

O R D E R

Per : Kuldip Singh, Judicial Member:

The appellant, M/s. Muniraj Synthetics (I) Pvt. Ltd. (hereinafter referred to as 'the assessee') by filing the present appeal, sought to set aside the impugned order dated 28.08.2023 passed by the National Faceless Appeal Centre(NFAC) [Commissioner of Income Tax (Appeals), Delhi] (hereinafter referred to as CIT(A)] qua the assessment year 2013-14 on the grounds inter-alia that :-

“1. The Ld. CIT (Appeals) (NFAC) has erred in dismissing the appeal ex-parte holding that Appellant is not interested in pursuing the appeal thereby dismissing the same without adjudicating on merits without appreciating that the Appellant is aggrieved by the additions made and interested in adjudicating the appeal and had appeared before the CIT(A) prior to faceless regime and also filed submission and paper book and thus, the appeal dismissing without adjudicating the same on merits is without any justification and the addition confirmed may be deleted.

2. The Ld. CIT(A) (NFAC) failed to appreciate that the Appellant did not receive any notice of hearing from NFAC either via email or message on mobile and in fact, did not even receive the impugned order (income-tax portal was checked while filing return of income and order passed by CIT(A) (NFAC) was found and downloaded) and even otherwise, having filed submission and paper book during manual hearing and also detailed statement of facts in the form of submission while filing appeal, which is reproduced in the order passed, the Ld. CIT(A) ought to have adjudicated the issue on merits of the case and thus, the appeal dismissed ex-parte without adjudicating the same on merits is without any justification and the additions confirmed may be deleted.

Without prejudice to the above, on merits:

B) Addition of Rs.36,00,000/- u/s.68 of the Act is unjustified and liable to be deleted

*3. The Ld. CIT (Appeals) (NFAC) has erred in passing ex-parte order and dismissing the appeal without adjudicating on merits and thereby confirming the addition made by AO of 36, 0 / (- u) / s * 0.68 of the Act without appreciating that the loan borrowed is genuine loan and lender confirmed the transaction in response to notice issued w / s * 0.133(6) of the Act and that the loan was repaid in the immediate succeeding year and none of the documentary evidences is doubted or disputed by the AO and thus, the addition made u/s.68 of the Act of Rs.36,00,000/- is without any justification and needs to be deleted.*

4. Without prejudice to the above and without admitting and accepting, the Ld. CIT (Appeals) (NFAC) failed to appreciate that the AO has not brought any evidence on record and/or any details to show any such alleged bogus loan was taken and the AO neither provided copies of any statement recorded nor allowed cross-examination and thus, the addition made of Rs.36,00,000/- is unjustified and liable to be deleted.

5. Without prejudice to the above and without admitting and accepting, the Ld. CIT(A)(NFAC) failed to appreciate that there is no other source of income except business income and therefore the addition, if any, ought to be made under the head income from business and thereby allow set off of loss brought forward from earlier year and thus, the

addition made of Rs.36,00,000/- is without any justification and needs to be deleted.

C) Disallowance of interest of Rs.84,033/-

6. The Ld. CIT(A) (NFAC) erred in dismissing the appeal without adjudicating the issue and thereby confirmed disallowed of interest paid on loan taken and on which, TDS was duly deducted and paid to the ex-chequer and the lender has confirmed the loan transaction and thus, the disallowance of interest of Rs.84,033/- is without any justification and needs to be deleted.”

2. Briefly stated facts necessary for consideration and adjudication of the issues at hand are : the return of income filed by the assessee claiming set off of brought forward loss of Rs.6,39,200/- was subjected to scrutiny. The Assessing Officer (AO) after declining the contentions raised by the assessee proceeded to hold that the assessee has failed to prove the identity and creditworthiness of M/s. Sumukh Commercial Pvt. Ltd. which is a benami concern of Shri Pravin Kumar Jain nor has proved the genuineness of the transaction qua the unsecured loan raised by the assessee to the tune of Rs.36,00,000/- and thereby treated the same as unexplained cash credit in the books of the assessee company and accordingly made addition thereof. The AO has also disallowed the interest to the amount of Rs.84,033/- claimed to have been paid by the assessee to M/s. Sumukh Commercial Pvt. Ltd. and thereby framed the assessment under section 143(3) of the Income Tax Act, 1961 (for short ‘the Act’).

3. The assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has confirmed the addition by dismissing the appeal ex-parte for want of prosecution without entering into its merits. Feeling aggrieved with the impugned order passed by the

Ld. CIT(A) the assessee has come up before the Tribunal by way of filing the present appeal.

4. We have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

5. At the very outset it is brought to the notice of the Bench by the Ld. A.Rs for the parties to the appeal that the Ld. CIT(A) has passed the impugned ex-parte order for want of prosecution without deciding the case on merits.

6. We have perused the impugned order passed by the Ld. CIT(A) at page 26 & 27 of the impugned order of the Ld. CIT(A) wherein the Ld. CIT(A) has written in tabulated form that 12 notices were issued to the assessee but no compliance was made nor any request for adjournment was received and thereby dismissed the appeal for want of prosecution.

7. The Ld. A.R. for the assessee by filing a paper book running into 288 pages brought to the notice of the Bench that vide letter dated 29.07.2019 available at page 1 he has sought adjournment as he was down with viral fever which letter is duly shown to have been received by the office of Ld. CIT(A). It is further brought to the notice of the Bench that the assessee has filed all the details required by the Ld. CIT(A) vide letter available at page 6 to 8 of the paper book.

8. From the facts and circumstances of the case it is proved that the assessee has filed the submissions along with necessary documents in physical form before Ld. CIT(A) but in the meantime case was transferred to faceless proceedings in which the assessee was required to file the submissions online which he has failed to file. The Ld. A.R. for the assessee contended that no further notice has ever been received by the assessee.

9. In these circumstances, we are of the considered view that adequate opportunity of being heard has not been given to the assessee. To decide the issue once for all the Ld. CIT(A) is required to decide the case on merits. In these circumstances, the impugned order passed by the Ld. CIT(A) is not sustainable in the eyes of law having been passed in violation of principle of natural justice, hence set aside. Case is remitted back to the Ld. CIT(A) to decide afresh after providing opportunity of being heard to the assessee.

10. Resultantly, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 29.02.2024.

**Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER**

**Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

Mumbai, Dated: 29.02.2024.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.