

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

**ITA No.52/Kol/2023
Assessment Year: 2009-10**

Star Tradecom Pvt. Ltd. 1 st Floor, Sterling Building, 31, Allenby Road, Kolkata, L. R. Sarani, West Bengal-700020. (PAN: AAMCS9899J)	Vs.	Income Tax Officer, Ward- 9(1), Kolkata.
(Appellant)		(Respondent)

Present for:

Appellant by : Shri Vikas Surana, FCA
Respondent by : Shri Rajeev Kumar, CIT, DR

Date of Hearing : 09.01.2024
Date of Pronouncement : 18.03.2024

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/250/2022-23/1048211740(1) dated 23.12.2022 passed against the assessment order by ITO, Ward-9(4), Kolkata u/s.144/263/147/143(3) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”), dated 31.03.2014 for AY 2009-10.

2. Grounds raised by the assessee are reproduced as under:

“1.For that the Ld CIT(A)-NFAC erred in passing an ex parte order, where no notice served on appellant, despite the fact that it was specifically mentioned that no notices/ communication should be sent on email, the CIT(A) therefore provided no opportunities of hearing based on merits of the case.

2. For that the Ld CIT(A)-NFAC erred in confirming the addition made by AO towards share capital raised Rs 5,07,00,000/- when no independent enquiries made by the AO as per specific directions of Ld PCIT in order u/s 263 dated 05/03/2013, when the relevant documents wrt share applicants

were already in the assessment records of Department, as per order u/s 147/143(3) dated 17.03.2011.”

3. The assessee has also raised additional ground vide application dated 09.08.2023 which are legal grounds and goes to the root of the matter as claimed by the assessee. The additional grounds so raised are reproduced as under:

“3. For that the reopening proceedings carried out vide issuance of notice under section 148 of the I.T Act on 16.12.2010 and thereafter proceedings completed on 17.03.2011, are bad-in-law and non-est based on decision in ACIT vs. Hotel Blue Moon, (2010) 321 ITR 362 (SC) since statutory notice under section 143(2) of the I. T Act was not issued and served to the Appellant company and, therefore, since the subject matter of the revisionary proceedings i.e. assessment order dated 17.03.2011 is nullity, bad-in-law and non-est, therefore, revisionary proceedings under section 263 cannot be carried out on the basis of such non-est assessment and the same deserves to be quashed.

4. For that the Ld. CIT cannot assume jurisdiction over proceedings which does not exist in the eyes of law, the order u/s 263 dated 05/03/2013 thus deserves to be quashed, all proceedings subsequent to the said order u/s 263 are of no consequence including the order u/s 144/263/147 dated 31.03.2014.”

3.1. Since the assessee has raised legal issues by the aforesaid additional grounds, the same are admitted for adjudication of the present appeal.

4. Brief facts of the case are that assessee filed its return of income on 11.07.2009 reporting a total income of Rs.714/-. After the processing of return u/s. 143(1) of the Act, notice u/s. 148 was issued on 16.12.2010. In compliance to the said notice, assessee had requested to treat its original return for the purpose of proceeding u/s. 147.

4.1. Reassessment was completed by making disallowance of preliminary expenses and addition on miscellaneous income at total assessed income of Rs.50,484/- vide order dated

27.03.2010. Subsequently, on examination of assessment records, Ld. CIT, Kolkata-III, Kolkata held that the said reassessment order u/s. 147 read with section 143(3) was erroneous in so far as it was prejudicial to the interest of revenue on the ground that requisite enquiries were not made regarding the identity and creditworthiness of the share subscribers through which the introduction of share capital of Rs.5,07,00,000/- was made during the year under consideration.

4.2. An order u/s. 263 dated 05.03.2013 was passed setting aside the said reassessment, directing the AO to pass a speaking order after examination and enquiry as well as verification of all the relevant aspects of the case. The directions and observations given by the Ld. CIT to the AO vide its revisionary order passed u/s. 263 are reproduced as under:

“I have considered the facts of the case and the decisions of the superior Courts cited above. I am of the opinion that the A.O. by not pursuing the inquiries to their logical end has made the order erroneous and prejudicial to the interest of revenue. The order is, therefore, set aside and the A.O. is directed to carry out thorough & detailed enquiries in the case. He should carry out inquiries about the various layers through which the share capital has been rotated. The A.O. is also directed to summon the present & past Directors of the assessee company and the subscriber companies and examine them. The A.O. should also examine as to when this company was sold. At that point of time the fictitious assets such as shares in other companies or loans given to other companies is converted back into cash by credit in the assessee company's bank account. The source of this money also needs to be examined. Further, information should be sent to the A.Os of the subscriber companies and to the other companies through which the capitol has been rotated regarding the findings of the A.O. Subsequent to the inquiries & verification of all relevant aspects of the case, the A.O. should pass a speaking order after providing adequate opportunity to the assessee.”

4.3. Assessee went in appeal before the Coordinate Bench of Tribunal against the order passed u/s. 263 in Appeal No. ITA

1176/Kol/2013 for which the order was pronounced on 10.08.2015, upholding the revisionary order and dismissing the appeal of the assessee.

4.4. In the year under consideration, assessee had raised share capital including share premium by issuing 5,07,000 equity shares at Rs. 10/- per share including share premium of Rs. 90/- per share, the details of shares issued by the assessee are tabulated as under:

Name of Allottee	Address of Allottee	No of shares issued
Bluediamond Tracom Private Limited	5, Munsii Sadruddin Lane, Ground Floor, Kolkata - 700 007	52,000
Delta Vintrade Private Limited	27, Weston Street, 5 th Floor, Kolkata - 700 012	18,000
Dynamic Vintrade Private Limited	27, Weston Street, 5 th Floor, Kolkata - 700 012	48,000
Empire Commotrade Private Limited	7/1A, Grant Lane, 3 rd Floor, Kolkata - 700 012	30,000
Gravity Vinimay Private Limited	7/1A, Grant Lane, 3 rd Floor, Kolkata - 700 012	20,000
Mangaldeep Suppliers Private Limited	142, Gowala Bagan, Ashabari Apartment, Kalindi, Kolkata - 700 048	76,000
Manokamna Suppliers Private Limited	142, Gowala Bagan, Ashabari Apartment, Kalindi, Kolkata - 700	35,000

	048 *	
Mercury Vinimay Private Limited	142, Gowala Bagan, Ashabari Apartment, Kalindi, Kolkata – 700 048	13,000
Omega Suppliers Private Limited	3A, Silpi Netai Paul Lane, 2 nd Floor, Kolkata – 700 005	26,000
Oxford Vinimay Private Limited	27, Weston Street, 5 th Floor, Kolkata – 700 012	33,000
Pratik Commercial Private Limited	1/2/H/21, J.K.Ghosh Road, Kolkata – 700 037	51,000
Sonata Vanijya Private Limited	27, Weston Street, 5 th Floor, Kolkata – 700 012	45,000
Subham Tradecom Private Limited	27, Weston Street, 5 th Floor, Kolkata – 700 012	30,000
Windsor Agencies Private Limited	142, Gowala Bagan, Ashabari Apartment, Kalindi, Kolkata – 700 048	30,000
	Total	5,07,000

4.5. Ld. AO took up the assessment proceeding pursuant to the revisionary order for which statutory notices were issued on the assessee. In the course of this effect giving assessment proceedings, in the impugned assessment order, ld. AO has noted certain facts about assessee requisitioning for copy of order sheet of the case records and issue of notices u/s. 142(1) as well as summons u/s. 131. These notices remained unserved and ultimately notice u/s. 142(1) was served by affixation through the Departmental Inspector. The relevant observations made by the AO in this respect are extracted as under:

“subsequently, a letter was filed by the A/R of the assessee on 19/06/13 calling for the copy of order sheets of the case record and the same was supplied, vide this office letter dated 02/07/13. However, the case was refixed for hearing on 21.11.2013 through this office letter dated 07.11.2013. But the same came back unserved on 22/11/13. Also details of requisition u/s. 142(1) was issued on 10.02.2014 by speed post

to the assessee fixing the case on 21.02.2014 and calling for, inter alia, details of shareholders. But, the same also came back unserved on 17/02/2014. Further, summons u/s. 131 were also issued by speed post to the directors of the assessee company fixing the hearing on 12.03.2014 and the same also came back unserved on 11/03/2014. Ultimately, the notice u/s. 142(1) had to be served by affixation through the departmental Inspector. From the above discussion it may be noted that the two vital ingredients namely identity, creditworthiness of the persons shown as shareholders of the assessee company could not be established inspite of best effort on the part of the department.”

4.6. This effect giving assessment was thus completed u/s. 144 by making an addition, *inter alia*, of Rs.5,07,00,000/- towards share capital including share premium u/s. 68 of the Act. Aggrieved, assessee went in appeal before the Ld. CIT(A).

4.7. In the first appellate proceeding, Ld. CIT(A) observed that assessee was granted opportunity to file submissions and documents in support of its grounds of appeal on several occasions. However, there was no response in this respect from the assessee. He, thus, dismissed the appeal of the assessee by holding that “.... *Therefore, considering the above factual and legal position, the appeal filed by the appellant is dismissed for non-prosecution.*” Aggrieved, assessee is in appeal before the Tribunal.

5. Before us, Ld. Counsel for the assessee has raised legal issue by way of additional grounds to contest that statutory notice u/s. 143(2) of the Act was not issued and served on the assessee in the course of reassessment proceedings u/s. 147 and, therefore, the subject matter of the revisionary proceedings is nullity. Accordingly, he claimed that revisionary proceedings u/s. 263 cannot be carried out on the basis of such non-est assessment. According to him, the

impugned effect giving assessment order is, therefore, liable to be quashed which is in consequence of order passed u/s. 263. On the merits of the case, he claimed that all the relevant documentary evidences including the replies furnished by the share subscribing companies filed in response to notices u/s. 133(6) in the reassessment proceedings u/s. 147 read with sec. 143(3) were on record, Ld. AO in the effect giving assessment proceedings has failed to consider the same while passing the said order ex parte.

6. Per contra, Ld. CIT, DR asserted that all along the proceedings, assessee had been participating through its representatives and it is for the first time in the present appeal that assessee has raised the legal issue of non-service of notice u/s. 143(2) of the Act. According to him, assessee has failed to furnish anything both before the AO and Ld. CIT(A).

7. We have heard the rival contentions and perused the material available on record. At the outset, we note that the impugned order has been passed ex parte since there was no compliance from the assessee in respect of the notices and summons issued by the AO. In this respect, assessee claimed that all the relevant material was already on record pursuant to the reassessment proceeding made u/s. 147 read with sec. 143(3) vide order dated 17.03.2011. We note in this respect that this order u/s. 147 read with section 143(3) was set aside pursuant to revisionary order passed u/s. 263 which was upheld by the Coordinate Bench of ITAT, Kolkata. There were specific directions by the Ld. CIT in the revisionary order to pass a fresh speaking order by the AO

which has been extracted above. The AO was required to conduct the impugned assessment proceeding in accordance with the specific directions given by the Ld. CIT in the revisionary proceeding. However, there is nothing on record which demonstrates conduct of such exercise to fulfil the directions given by the Ld. CIT.

7.1. Further, we take note of the fact that Ld. CIT(A) has dismissed the appeal of the assessee for non-prosecution without going into the issues raised by the assessee. In this respect, we note that Section 250(6) cast a duty on Ld. CIT(A) to pass an order in appeal which should state the points for determination and a decision as well as the reason for arriving at such decision. In the present case before us, compliance has not been met while disposing of the appeal by Ld. CIT(A). We deprecate such an approach adopted by Ld. CIT(A) while dismissing the appeal for non-prosecution which does not meet the requirements of section 250(6) of the Act.

8. At this juncture, we need to consider whether the present appeal ought to be remitted back to the file of Ld. CIT(A) or the AO since both the authorities below have passed their respective orders either on non-prosecution or as an ex parte order. In the present set of facts, where the assessee claims that all the relevant documentary evidence are already on record, pursuant to reassessment proceedings u/s. 147 read with sec. 143(3), we find it appropriate to remit the matter back to the file of Ld. AO instead of remitting it to the file of the Ld. CIT(A). If we remit the matter back to the file of Ld. CIT(A), it will lead to multiplicity of proceedings since remand proceedings would be necessary to arrive at proper conclusion on the issues raised by the assessee impugned assessment being made u/s. 144. Also, AO is required to follow and meet the compliance requirement of the specific

directions given by Ld. CIT in the revisionary proceedings. Therefore, we remit the matter back to the file of Ld. AO to pass a speaking order by complying with the directions of the Ld. CIT and taking into consideration the material on record. Needless to say that assessee should be given reasonable opportunity of being heard to make submissions in respect of its claim as well as the details called by the AO pursuant to directions given by the Ld. CIT. We also direct the assessee to appropriately respond to the notices and hearings fixed by the AO for expeditious disposal of the remanded proceedings. Since we remit the matter back to the file of Ld. AO for making fresh assessment pursuant to the directions of Ld. CIT, the grounds raised by the assessee including the additional grounds are allowed for statistical purposes.

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

Order is pronounced in the open court on 18th March, 2024.

Sd/-
(Rajpal Yadav)
Vice President

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 18th March, 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