

**IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, BENGALURU BENCH
BENGALURU**

**BEFORE SHRI N. K. CHOUDHRY, JM &
SHRI LAXMI PRASAD SAHU, AM**

I.T.A. No.323/BANG/2024
(Assessment Year: 2021-22)

**M/s. Maniveera Structure
Pvt. Ltd.**
No.2, 11th Floor, Solus,
1st Cross, JC Road,
Bengaluru - 560 027

Vs.

**Income Tax Officer,
Ward 4(1)(3),
Bengaluru**

PAN No. **AAJCM3439K**

(Appellant)

:

(Respondent)

Appellant/Assessee by : Shri Prashanth G.S, CA
Respondent/Department by : Shri Subramanian. S, JCIT

Date of Hearing : 14.03.2024
Date of Pronouncement : 14.03.2024

O R D E R

Per N. K. Choudhry, JM:

This appeal has been preferred by the Assessee against the order dated 1.1.2024, impugned herein, passed by National Faceless Appeal Centre (NFAC), Delhi/Ld. Commissioner of Income Tax (Appeals) [in short 'Ld. Commissioner'] under section 143(3) of the Income Tax Act 1961 (in short 'the Act') for the Assessment Year (in short 'AY') 2021-22.

2. In the instant case, the Assessing Officer (in short 'AO') vide assessment order dated 20.12.2022 u/s. 143(3) r.w.s. 144B of the Act made the addition of Rs.2,69,55,495/- on account of disallowance qua payment of counterfeit expenses not allowable under provisions of section 37 of the Act and consequently added the same in the income of the Assessee.

3. The Assessee being aggrieved preferred first appeal before the Id. Commissioner, who though afforded various opportunities to the Assessee, however, the Assessee failed to avail the same, therefore, the Id. Commissioner by observing as under:

“That on the basis of the above facts, it is evident and clear that the Assessee is not interested in filing any details during the appellate proceedings and to avail the opportunity under the Principles of Natural Justice. No further opportunity was provided as the appellant had already been granted 5 opportunities which shows that the appellant is a habitual non compliant and had no regards for the statutory proceedings. It is also matter of record that on 1.3.2023 a channel of communication was enabled under intimation to the Assessee in this case. This means that Assessee also had additional opportunity to make any submission in support of his grounds of appeal even if there was no notice issued to the Assessee. It is further matter of record that the Assessee has not availed even this opportunity. Hence this appeal is being decided on the basis of the material available on record. In such situation, only conclusion can be drawn that the Assessee is not interested in pursuing the appeal.

Ultimately dismissed the appeal of the Assessee by relying on the decision of Hon'ble Bombay High Court in the case of M/s. Chemipol V/s. Union of India in Excise Appeal No.62 of 2009 and in the case of CIT V/s. Multiplan India(P) Ltd. (38 ITD 320) (Del).

4. The Assessee being aggrieved is in appeal before us. The Assessee before us submitted that the notices sent by the Id. Commissioner somehow went to the group e-mail which resulted in non-compliance. We observe that in the Form No.35 as well as in Form No.36, the Assessee has given the e-mail address as amaccounts@jainheights.com and there is no denial by the Assessee that notices were not sent to this e-mail address. The conduct of the Assessee seems to be casual and irresponsible. From Para No.2 of the assessment order also, it clearly reflects that the AO though granted various opportunities by sending at least 8 notices to the Assessee, however, the Assessee by replying in part, on one or two occasions, did not cooperate with the assessment proceedings and failed to file the relevant submissions/documents, therefore did not discharge its onus to substantiate its claim by providing cogent evidence and any satisfactory reply and in the absence of confirmation of transactions from the parties, the AO was constrained to make the addition under consideration which also reflects the non-cooperative attitude of the Assessee. However by considering the peculiar facts and circumstances of the case, as issue in this case due to non-filling of proper submission/documents by the Assessee, remained to be adjudicated in its true spirit and right perspective and it is the mandate of the Article 265 of the Constitution of India that no tax shall be levied or collected except by authority of law and therefore for the just decision of the case and for the ends of justice, we are inclined to remand the instant case to the file of the Id. Commissioner for decision afresh, however subject to deposit of Rs.11,000/- in the Revenue Department. Suffice to say the Id. Commissioner shall grant reasonable opportunities to the Assessee to substantiate its case and in case of default, the Assessee shall not be entitled for any leniency.

We are also inclined to direct the Assessee to comply with the notices and co-operate with the appellate proceedings and file the relevant submissions/documents as would be essential/required before the Id. Commissioner and in case of further default, the Assessee shall not be entitled for any leniency.

Thus in the aforesaid terms, the case is remanded to the file of the Ld. Commissioner accordingly.

5. In the result appeal filed by the Assessee stands allowed for statistical purposes.

Order pronounced in the open court on 14.03.2024 during virtual hearing.

Sd/-
(Laxmi Prasad Sahu)
Accountant Member

Sd/-
(N. K. Choudhry)
Judicial Member

Mini, Sr.PS.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai