

IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH KOLKATA

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.723/Kol/2023
Assessment Year: 2009-10**

Vasudev Merchants Pvt. Ltd. Room No. 10, 3 rd floor, Mercantile Building, 9/12, Lal Bazar Street, Kolkata-700001. (PAN: AACCV7843H)	Vs.	Income Tax Officer, Ward- 5(3), Kolkata
(Appellant)		(Respondent)

Present for:

Appellant by : Shri Amit Agarwal, Advocate
Respondent by : Shri Rakesh Kumar Das, CIT, DR

Date of Hearing : 14.03.2024
Date of Pronouncement : 19.03.2024

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) vide Appeal No. ITBA/NFAC/S/250/2022-23/1046325056(1) dated 15.10.2022 passed against the assessment order by ITO, Ward-5(3), Kolkata u/s. 144/263/143(3) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”), dated 02.03.2015 for AY 2009-10.

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

“1. That, on the facts and in the circumstances of the case, the Ld. C.I.T. (A), NATIONAL FACELESS APPEAL CENTER (NFAC), DELHI [hereinafter referred to as CIT(A)] erred in confirming the addition made by the Ld. Assessing Officer [hereinafter referred to as AO].

2. That under the facts and in the circumstances of the case, Ld. CIT(A) erred in passing order ex-parte.

3. That on the facts and in the circumstances of the case, Ld. CIT(A) failed to provide valid opportunity of hearing since Ld. CIT(A) erred) erred in ignoring the adjournment request filed by assessee on 05/10/2022 seeking adjournment up to 21/10/2022.

4 That under the facts and in the circumstances of the case, the Ld. CIT was wrong in initiating the proceedings under 263 without jurisdiction and accordingly the consequential order passed is also bad in law.

5. For that presuming Ld. AD erred on facts by not flowing in absolute the guidance in the order passed u/s 263 of the Act.

6. That under the facts and in the circumstances of the case, the Ld. CIT (A) erred in confirming the addition of a sum of Rs.5,88,19,745/- made by the AO for the share capital raised. The addition is unjustified and need to be deleted.

7. For that in view of the facts and circumstances of the case, Ld. CIT (A) erred on facts as well as in law in making addition of Rs. 22,619/- by resorting to section 14A of the Income Tax Act 1961.

8. That the appellant craves leave to add, alter, amend or withdraw any ground or grounds of appeal before or at the time hearing.”

3. There is a delay of 216 days for which assessee has placed on record an affidavit along with petition for condonation of delay. On an earlier occasion vide order sheet dated 13.12.2023 it was observed as under:

“The present appeal is directed at the instance of assessee against the order of ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 15th October, 2022 passed for A.Y. 2009-10.

2. The ld. Counsel for the assessee submitted that ld. CIT (Appeals) has not granted opportunity of hearing to the assessee. He further submitted that the assessee has sought adjournment through e-mail and submitted that hearing be fixed after 21st October, 2022, but ld. CIT(Appeals) has decided the appeal on 15th October, 2022. He placed copy of the material before us. However, on perusal of the record, it came to our notice that appeal is time barred by 216 days and there is no application for condonation of delay. Therefore, this appeal is released for fresh hearing. The objection regarding time barred was duly intimated to the assessee when acknowledgment for filing of the appeal was issued to the person, who has filed the appeal personally by hand.

3. The Registry is directed to send a copy of this order. Hearing is fixed for 15th February, 2024. Both the parties informed.”

3.1. In reference to the above order sheet entry, assessee has furnished its affidavit along with explanation for the same and a copy

of adjournment filed before the Ld. CIT(A). The delay is accordingly, condoned. We note that the Ld. CIT(A) dismissed the appeal of the assessee without providing proper opportunity of hearing to the assessee even without adjudicating the grounds of appeal raised by the assessee.

4. 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, even though assessee has not made its submissions along with supporting documents, however, compliance has not been met by the Ld. CIT(A) while disposing of the appeal since a detailed statement of facts is on record which has not been considered. Further, assessee had sought an adjournment vide its application uploaded on 05.10.2022 seeking adjournment upto 21.10.2022. Without considering this request, Ld. CIT(A) passed the order on 15.10.2022 and dismissed the appeal. Accordingly, we find it proper to remit the matter back to the file of Ld. CIT(A) for meritorious disposal of the grounds taken by the assessee, by passing a speaking order. Needless to say that assessee be given reasonable opportunity of being heard to make any submission it wants to make in support of its grounds of appeal. Accordingly, grounds taken by the assessee are allowed for statistical purposes.

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

Order pronounced in the open court on 19th March, 2024.

Sd/-

(Sanjay Garg)
Judicial Member

Sd/-

(Girish Agrawal)
Accountant Member

Dated: 19th March, 2024

JD, Sr. P.S.

Copy to:

1. The Appellant:
 2. The Respondent.
 3. CIT(A), NFAC, Delhi
 4. The Pr. CIT, Kolkata.
 5. DR, ITAT, Kolkata Bench, Kolkata
- //True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata