

IN THE INCOME TAX APPELLATE TRIBUNAL

"C" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.3527/Mum./2023

(Assessment Year : 2009-10)

Prakruti Infrastructure Pvt. Ltd.

477, Babylon Building, Adenwala Road

Matunga (East), Mumbai 400 019

PAN – AADCP8179M

..... Appellant

v/s

Asstt. Commissioner of Income Tax

Central Circle-1(3), Mumbai

..... Respondent

Assessee by : Shri Sayeed Nadeem Lasani

Revenue by : Shri H.M. Bhatt

Date of Hearing – 14/03/2024

Date of Order – 21/03/2024

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 28/07/2023 passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*"learned CIT(A)"*], for the assessment year 2009-10.

2. In the interest of justice, the slight delay of 8 days in filing the present appeal is condoned.

3. In this appeal, the assessee has raised the following grounds:-

"Legal:

1. Reopening under section 147/148 is bad in law

The Ld. Commissioner of Income Tax (Appeals) (hereinafter referred to as the "Ld. CIT(A)") erred in confirming the action of the Ld. A.O. in reopening the assessment of the Appellant by issuance of the notice under section 148 of the Act without recording valid and proper reasons to show that any income chargeable to tax has escaped assessment. Hence, the notice under section 148 and subsequent assessment order passed under section 144 r.w.s. 147 is bad in law and the same may be quashed and set aside.

2. No Proper Sanction u/s 151 and hence order is bad in law

The Ld. Commissioner of Income Tax (Appeals) (hereinafter referred to as the "Ld. CIT(A)") erred in confirming the action of the Ld. A.O. in reopening the assessment of the Appellant by issuance of the notice under section 148 of the Act without having proper sanction u/s 151. Hence, the notice under section 148 and subsequent assessment order passed under section 144 r.w.s. 147 is bad in law and the same may be quashed and set aside.

Merit:

3. Addition of Rs. 70354410/- as unexplained Credits

The Ld. Commissioner of Income Tax (Appeals) (hereinafter referred to as the "Ld. CIT(A)") erred in confirming the action of the Ld. A.O. by making addition of Rs. 70354410/- as undisclosed income without any basis. Hence, addition made is bad in law and the same may be deleted and set aside.

4. The Appellant craves leave to add, alter, rescind or amend any of the above grounds of appeal."

4. The brief facts of the case are that for the year under consideration, the assessee filed its return of income on 27/09/2009 declaring a total loss of Rs.1,45,594. The return was processed under section 143(1) of the Act. Subsequently, on the basis of the information received that the assessee has availed accommodation entries of bogus purchases from Mr. Praveen Kumar Jain of Rs.1,05,00,000 and has taken loan to Rs.6 crore, proceedings under section 147 of the Act were initiated and notice under section 148 of the Act was issued. In response to the aforesaid notice, the assessee submitted that the return originally filed may be treated as a return filed in response to notice

issued under section 148 of the Act. During the reassessment proceedings, notices under section 133(6) of the Act were issued to the entities from whom the assessee has availed accommodation entries and availed the loan of Rs.6 crore. Further, the assessee was asked to produce the parties for verification. However, the assessee stated that in the statements given by them the name of the assessee does not appear. After considering the details and information received and submission of the assessee, the Assessing Officer ("AO") vide order dated 28/12/2016 passed under section 143(3) read with section 147 of the Act held that the assessee in response to specific show cause notice has not made any submissions to disprove the Revenue's allegations concerning the parties to the transactions and the controlling persons have categorically admitted of providing only bogus accommodation entries for a commission to the clients. The AO further held that the books maintained by such entry providers were seized/impounded by the Investigation Wing wherein the name of the assessee also appears. However, despite communication of the above facts of the assessee, except for pointing out some technicalities and the documents, the assessee has not explained the real transaction behind these entries availed in the books. Further, the assessee has not proved the source and nature of the transaction and therefore the provisions of section 68 of the Act are clearly attracted in this case. Accordingly, the amount of Rs. 7,05,00,000 brought in by the assessee in its books as bogus purchases was treated as unexplained credit within the meaning of section 68 of the Act and added to the total income of the assessee.

5. In the appeal before the learned CIT(A), the assessee challenged the addition made by the AO. However, the assessee failed to respond to various notices issued by the learned CIT(A). Accordingly, the learned CIT(A) dismissed the appeal filed by the assessee, vide *ex-parte* order, in the absence of any material contrary to the findings of the AO. Being aggrieved, the assessee is in appeal before us.

6. We have considered the rival submissions and perused the material available on record. It is evident that the learned CIT(A) has passed the order *ex-parte* due to the non-appearance of/on behalf of the assessee. During the hearing, the learned AR submitted that due to miscommunication between the assessee and the consultant, notices issued by the learned CIT(A) could not be attended and no submissions were made. Now in appeal before us, the assessee is duly represented by the learned AR and wishes to pursue the litigation against the addition made by the AO. In view of the above, we are of the considered opinion that in the larger interest of justice, the assessee be hereby granted one more opportunity to represent its case on merits before the learned CIT(A). Consequently, we deem it fit and proper to restore the matter to the file of the learned CIT(A) for *de novo* adjudication of the appeal on merits after consideration of all the details/submissions as may be filed by the assessee. Needless to mention no order shall be passed without affording reasonable opportunity of hearing to the parties. Further, the assessee is directed to appear before the learned CIT(A) on all the dates of hearing as may be fixed without any default. As the matter is being restored to the file of the learned CIT(A) for adjudication on merits, the other grievances raised by

the assessee in the present appeal do not call for adjudication at this stage. Accordingly, grounds raised by the assessee are allowed for statistical purposes.

7. In the result, the appeal by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 21/03/2024

Sd/-
PRASHANT MAHARISHI
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 21/03/2024

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai