

आयकर अपीलीय अधिकरण “बी” न्यायपीठ चेन्नईमें।
IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, CHENNAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VP AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं. ITA No.1081/Chny/2023
(निर्धारण वर्ष / Assessment Year: 2018-19)

ITO Non-Corporate Ward-7(1) Chennai.	बनाम/ Vs.	M/s. Aaditra Foundations Old No.76 New No.54, 1 st floor, U Block, Anna Nagar, Chennai-600 040.
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. AAYFA-3288-Q		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से/ Appellant by	:	Shri D. Hema Bhupal (JCIT)-Ld. Sr. DR
प्रत्यर्थी की ओर से/ Respondent by	:	Shri Y. Sridhar (CA)- Ld.AR

सुनवाई की तारीख/ Date of Hearing	:	20-03-2024
घोषणा की तारीख / Date of Pronouncement	:	25-04-2024

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by Revenue for Assessment Year (AY) 2018-19 arises out of an order passed by learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [CIT(A)] on 28-07-2023 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s. 147 r.w.s 144 rws 144B of the Act on 17-02-2023. The grounds taken by the Revenue read as under: -

1. The order of the CIT(A) is contrary to law, facts and circumstances of the case.
2. The Ld. CIT(A) erred in not appreciating the fact that the assessee has not responded to any of the notices / correspondences issued by the Department either in person or through mail even though mails got delivered as per ITBA Module.

3. The Ld. CIT(A) erred in not providing any opportunity u/s 46A of IT Act to the Assessing Officer or calling for a Remand report
4. The Ld. CIT(A) erred in not appreciating the fact that the closing of business operation and surrender of PAN in Nov. 2017 will not absolve the assessee from any proceedings of the Department as the reopening of assessment was done within the time limit prescribed in the IT Act.
5. The Ld. CIT(A) erred in not appreciating the fact that the transactions took place before 08.11.2017 on which date, assessee claims to have filed letter to the JAO intimating closure of operations and surrender of PAN.
6. The Ld. CIT(A) erred in not examining the source for the credits in the account of the assessee.
7. The Ld. CIT(A) erred in holding that the credits from the partners account are to be construed as investment without examining the genuineness of transaction.
8. For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the learned CIT(A) may be set aside and the Assessing Officer restored.

The Ld. Sr. DR advanced arguments on violation of Rule 46A. The Ld. AR submitted that factual findings have been rendered in the impugned order which need not be interfered with. Having heard rival submissions and upon perusal of case records, the appeal is disposed-off as under.

2. The assessee being resident firm did not file return of income for the year. Armed with the information that the assessee made time deposit with bank and also received interest against the same, the case was reopened and the assessee was directed to file its return of income. Since the assessee remained non-compliant, Ld. AO added deposit of Rs.207.06 Lacs to the income of the assessee. The interest income of Rs.2.62 Lacs was also added as income from other sources.

3. During appellate proceedings, the assessee submitted that it was engaged in business of real estate and civil work. Due to sluggishness in the construction business, the firm closed its operations and surrendered its PAN during November, 2017. Since the business was closed, the assessee could not represent during assessment proceedings.

4. On merits, the assessee submitted that out of total credit of Rs.207.06 Lacs in Kotak Mahindra Bank Ltd., an amount of Rs.60 Lacs

was received from one of the partners as capital contribution whereas the remaining amount was sweep credit wherein the bank automatically transfers surplus funds to deposits. Whenever the current account falls short, the funds from sweep account is transferred back to the current account. Therefore only interest would be taxable and not the entire sweep credit. The assessee also furnished a detailed chart summarizing bank transactions in this regard which has been extracted in para 6.5 of impugned order. The assessee also filed confirmation letter from partner in support of capital infusion by the partner. The Ld. CIT(A) concurred that the credit to the tune of Rs.147.06 Lacs were from sweep account. The amount of Rs.109.30 Lacs was also transferred from current account to sweep account. Therefore, the addition of Rs.207.06 Lacs was deleted against which the revenue is in further appeal before us.

Our findings and Adjudication

5. Upon perusal of the facts, it emerges that the assessee's business was closed down during November, 2017 and it had already surrendered its PAN. The same could be considered to be a reasonable cause for non-representation during assessment proceedings. It also emerges that the assessee is holding current account. In case of surplus funds beyond certain threshold limit, the excess funds would be transferred to deposit account and whenever there is shortfall in current account, the amount is transferred back to current account. Therefore, it is cyclical transaction and deposits could not be considered to be the income of the assessee. In respect of capital infusion, the assessee duly furnished the confirmation from the partner and accordingly, it was successful in establishing the source of cash credit. In such a case, the credit could

not be considered to be the income of the assessee. Therefore, the adjudication of Ld. CIT(A) could not be faulted with.

6. The prime grievance of the revenue is violation of Rule 46A. However, Ld. CIT(A) has already rendered factual findings after examining the documentary evidence as filed by the assessee. It is another fact that when the business has been closed down, the assessee would not have any other source of income except capital infusion by the partner. Therefore, we see no reason to accept the argument of Ld. Sr. DR.

7. The appeal stand dismissed.

Order pronounced 25th April, 2024

Sd/-
(MAHAVIR SINGH)
उपाध्यक्ष / **VICE PRESIDENT**

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखा सदस्य / **ACCOUNTANT MEMBER**

चेन्नई Chennai; दिनांक Dated : 25-04-2024
DS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF