

IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH MUMBAI
BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIALMEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

ITA No.4223/MUM/2023
Assessment Year: 2012-13

Rubberwala Developers Ground Floor, Rubberwala House, Dr.A.Nair Road, Agripada, Mumbai- 400011 (PAN: AAIFR9899Q)	Vs.	Income Tax Officer, Ward- 19(3)(2), Mumbai.
(Appellant)		(Respondent)

Present for:

Appellant by : Ms. Shruti Mandare
Respondent by : Smt. Mahita Nair, Sr. DR

Date of Hearing : 29.04.2024
Date of Pronouncement : 30.04.2024

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld. CIT(A)-51, Mumbai, vide order no. ITBA/APL/S/250/2023-24/1056745167(1) dated 04.10.2023 passed against the assessment order by ITO, Ward-19(3)(2), Mumbai u/s.143(3) of the Income-tax Act, 1961 (hereinafter referred to as the "Act"), dated 21.12.2016 for AY 2012-13.

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

"1. On the facts and circumstances of the Appellant's case and in law Ld. CIT (A) erred in passing an ex-parte order, without providing an adequate opportunity of being heard to the appellant.

2. On the facts and circumstances of the Appellant's case and in law Ld. CIT (A) erred in confirming the action of Ld. A.O. erred in holding that the appellant had

availed accommodation entries in the form of bogus unsecured loans, for the reasons mentioned in the impugned order or otherwise.

3. On the facts and circumstances of the Appellant's case and in law Id. CIT (A) erred in making an addition of Rs.79,50,000/- on account of unsecured loans taken by the appellant, treating the same as unexplained cash credit, by invoking the provisions of section 68 of the Act, for the reasons mentioned in the impugned order or otherwise.

4. On the facts and circumstances of the Appellant's case and in law Id. CIT (A) erred in disallowing an interest on unsecured loans amounting to Rs. 5,41,553/- paid by the appellant, for the reasons mentioned in the impugned order or otherwise.”

3. Brief facts of the case as called out from records are that assessee filed its return of income on 04.10.2012 reporting total income as Rs.1,17,529/-. A survey action u/s. 133A was conducted at the premises of M/s. Rubberwala Housing and Infrastructure Ltd. and its group concerns which included the assessee also. Upon receipt of information from the office of ADIT(Inv.), Unit -4(2), Mumbai, case of the assessee was taken up for scrutiny assessment. From the perusal of the said information,ld. AO noted that assessee had obtained accommodation entries of unsecured loans during the year under consideration, details of which is tabulated as under:

Sr.No.	Name	Amount (Rs.)
1.	M/s. Shree Bhairav Diamond Pvt. Ltd.	25,00,000
2.	M/s. Kush Gems Pvt. Ltd.	39,50,000
3.	M/s. Shradha Gems	15,00,000
	Total	79,50,000

3.1 Ld. AO asked the assessee to furnish requisite details to establish identity and creditworthiness of the parties from whom unsecured loans were taken during the year and to establish the genuineness of the transactions. Ld. AO noted that assessee has furnished its written submissions along with the relevant documentary evidences to substantiate its claim. Upon considering these, Ld. AO arrived at adverse conclusion and held these loans as

unexplained cash credit u/s. 68 of the Act and made the addition of the same to the total income. Consequent to this addition, he also disallowed the claim of interest expenses on these loans amounting to Rs.5,41,553/- which was also added to the total income. Aggrieved the assessee went in appeal before the CIT(A).

3.2 From the perusal of the impugned order of the CIT(A), it is noted that appeal of the assessee have been dismissed for lack of prosecution. In para 5 of the said order ld. CIT(A) has noted that notices were issued to the assessee from time to time, however, no response was received from the assessee. There are close to 10 dates of hearings which were fixed, none of which were attended or complied with by the assessee. According to him, since the assessee failed to avail these numerous opportunities, the appeal was dismissed. Since assessee appeared not to be serious in pursuing its appeal. Aggrieved, the assessee is in appeal in Tribunal.

4. Before us, the Ld. Counsel for the assessee asserted on ground no.1, whereby an *ex-parte* order has been passed by the ld. CIT(A). She pleaded that an opportunity may be granted to the assessee to represent its case effectively by remanding the matter back to the file of CIT(A) for meritorious disposal. On a specific query by the Bench to this effect as to understand the reasons which prevented the assessee in making its representation despite several opportunities given by the ld. CIT(A), she submitted that all these hearings were listed within a span of less than three months and that the Counsel could not be engaged by the assessee during this period. She prayed that though there has been negligence on the part of the assessee, yet all the documents and relevant material were on record which were furnished before the ld. AO and ought to have been taken into consideration while disposing the appeal. She also gave an assurance to diligently attend and participate in the appellate proceedings before the ld.

CIT(A), once the matter is remanded. On confrontation of these submissions to the ld. Sr.DR, it was objected that the assessee has failed to avail several opportunities given by the CIT(A) which should not be repeated, if the matter is remanded.

5. We have heard the rival contentions and perused the material on record. We note that assessee had made its submissions alongwith relevant documentary evidences in the course of assessment proceedings, fact of which is noted in the impugned assessment order. However, an adverse view had been taken by the ld. AO for which the matter went into appeal. At the first appellate stage, there are lapses on the part of the assessee to attend the hearings for an effective and meritorious disposal of its appeal. Also, ld. CIT(A) has dismissed the appeal for lack of prosecution.

5.1. Section 250 of the Act provides for procedure to be adopted while disposing of the appeal by the Ld. CIT(A). Sub-section (4) of section 250 of the Act provides that the Ld. CIT(A) may, before disposing of any appeal, make such further inquiry as he thinks fit, or may direct the Assessing officer to make further inquiry and report the result of the same to the Commissioner (Appeals). Further, sub-section (6) provides that the CIT(A) shall pass an order in writing and shall set the points for determination, the decision thereon and the reasons for the decision. Keeping in mind the provision of sections 250 of the Act, it is incumbent upon the Ld. CIT(A) to pass a speaking order on the merits of the case by examining, verifying and analyzing the material on record.

5.2. Considering the submissions made before us, in the interest of justice and fair play, we find it appropriate to remit the matter back to the file of ld. CIT(A) for *denovo* meritorious adjudication on the grounds of the appeal taken at the first appellate stage. We also direct

the assessee to be diligent and cooperative in attending the hearings and make its submissions for expeditious and effective disposal of the appeal. It should not seek adjournments unless warranted by compelling reasons.

5.3. Since the matter is restored to the file of Ld. CIT(A) for meritorious adjudication by passing a speaking order in terms of our observations made hereinabove, we are not expressing any views on the merits of the case so as to limit the appellate procedure before the Ld. CIT(A). The observations herein made by us in remanding the matter back to the file of Ld. CIT(A) will not impair or injure the case of the Revenue nor will it cause any prejudice to the defense/explanation of the assessee.

6. In the result, the appeal of assessee is allowed for statistical purpose.

Order is pronounced in the open court on 30 April, 2024

Sd/-
(Narender Kumar Choudhry)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 30 April, 2024

Mini, Sr.P.S.

Copy to :

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

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai