

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "D", MUMBAI**

BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER

AND

MS. PADMAVATHY S, ACCOUNTANT MEMBER

**ITA No. 2466/M/2023
Assessment Year: 2008-09**

M/s. Manthan Gems 310, Panchratna, Opera House, Maharashtra 400004 PAN: AANFM3833C	Vs.	I.T.O., 19(2)(3), Room No. 218. 2 nd Floor, Matru Mandir, Tardeo Road, Maharashtra 400007
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Tapan Panigrahy, A.R.
Revenue by : Smt. Mahita Nair, Sr. D.R.

Date of Hearing : 02. 04. 2024
Date of Pronouncement : 30 .04. 2024

O R D E R

Per : Narender Kumar Choudhry, Judicial Member:

This appeal has been preferred by the assessee against the order dated 15.05.2023 impugned herein passed by the National Faceless Appeal Center (NFAC)/ Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) under section 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2008-09.

2. In this case, the assessee had declared its total income at Rs.26,930/- by filing its return of income dated 25.09.2008 which was processed under section 143(1) of the Act and later on was completed under section 143(3) of the Act, whereby the total income of the assessee was assessed at Rs.60,310/-. Subsequently, the case of the assessee was re-opened under section 147 of the Act and consequently notice dated 23.03.2015 under section 148 of the Act was issued to the assessee. Other statutory notices were also issued, whereby the assessee was asked *“as to why the purchases made were not treated as accommodation entries and accordingly the income of the assessee during the year under consideration”*.

The assessee in response to the said notices preferred not to provide any details or explanation and therefore on the basis of search and seizure action carried out at Bhanwarlal Jain and its group concerns on 3rd October, 2013 by the DGIT (Investigation), Mumbai, wherein it was established that the group concerns are all paper companies/ firms/ partnership concerns with no real business activities, operating solely with the purpose of facilitation of fraudulent financial transactions which includes, among others, providing of accommodation entries in the form of unsecured loans and bogus sales bills to the interested parties. On going through the documents forwarded by the DGIT (Inv.), Mumbai it was found that the above-mentioned assessee has also obtained accommodation entries for the unsecured loans from the concerns of Bhanwarlal Jain during the

assessment year under consideration. The details of the same are as under:

Sr. No.	Name of the entry issuer	Financial Year	Amount
1.	Jewel Diam	2007-08	96,93,316
2.	Kothari & Co.	2007-08	74,93,506
3.	Little diam	2007-08	94,96,875
Total			2,66,83,697

The Assessing Officer vide assessment order dated 23.03.2016 under section 144 read with section 147 of the Act ultimately made the addition of Rs.2,66,83,697/- on account of alleged non-genuine purchases.

3. The assessee being aggrieved, challenged the said addition before the Ld. Commissioner who, as it appears in Para 2 of the impugned order, fixed the case of the assessee during the Corona period Covid-19 many times, however, after 31st December, 2020 issued the notice dated 04.05.2023 for the date of hearing/ compliance on 11.05.2023. The assessee made no compliance, therefore the Ld. Commissioner by considering the peculiar facts and circumstances of the case and by observing *“that in spite of granting the reasonable opportunities the assessee has not made any compliance and not filed any document/ submission, which appears that the assessee is not keen to pursue the appeal”*, ultimately dismissed the appeal of the assessee for non-prosecution.

4. The assessee being aggrieved, preferred the instant appeal. Though, today the assessee, by filing an

application for adjournment, has sought an adjournment, however, as we have observed above that the Ld. Commissioner decided the case as ex-parte and dismissed the appeal on non-prosecution, hence by considering the peculiar facts and circumstances, we are inclined to decide the appeal by dismissing the adjournment application filed by the assessee.

Coming to the merits of the case, we observe that the Ld. Commissioner issued various notices to the assessee for the appellate proceedings during the year 2020 which was admittedly the Covid-19 period and thereafter only one notice was issued on 04.05.2023 i.e. after a gap of three years from the last notice issued on 24.12.2020. Even otherwise it is not apparent from the impugned order, as to whether the notice dated 04.05.2023 has ever been served upon the assessee or not? Considering the peculiar facts and circumstances in totality and 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 Ld. Commissioner for decision on merits, suffice to say by affording reasonable opportunity to the assessee.

The assessee is also directed to comply with the notices and cooperate with the appellate proceedings before the Ld. Commissioner and file the relevant reply/submission/ documents as would be essential/required for proper adjudication of the appeal of the assessee by the Ld. Commissioner. In case of further default, the assessee shall not be entitled for any leniency.

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

Order pronounced in the open court on 30.04.2024.

Sd/- (MS. PADMAVATHY S) ACCOUNTANT MEMBER	Sd/- (NARENDER KUMAR CHOUDHRY) JUDICIAL MEMBER
--	---

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Mumbai.

Dy/Asstt. Registrar, ITAT,