

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

**SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 4210/MUM/2023
(Assessment Year: 2017-18)**

JM Financial Limited,
7th Floor, Cnergy Appasaheb
Marathe Marg, Prabhadevi,
Mumbai - 400025
[PAN: AAACJ2590B]

.....

Appellant

**Deputy Commissioner of Income Tax,
Circle 4(3)(1), Mumbai,**
Room No. 649, 6th Floor,
Aayakar Bhavan, M.K. Road,
Mumbai - 400020

Vs

.....

Respondent

Appearance

For the Appellant/Assessee : Dr. K Shivram
For the Respondent/Department : Shri Ankush Kapoor

Date

Conclusion of hearing : 17.04.2024
Pronouncement of order : 29.04.2024

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Assessee has challenged the order, dated 27/09/2023, passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'the CIT(A)'] for the Assessment Year 2017-18, whereby the Ld. CIT(A) had dismissed the appeal of the Assessee against the Assessment Order, dated 29/12/2019, passed under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

2. The Assessee has raised the following grounds of appeal:

"A) Passing an ex-parte order without giving a reasonable and sufficient opportunity of being heard.

1) *The learned Commissioner of Income Tax (Appeals) (CIT(A), (National Faceless Appeal Centre (NFAC), Delhi) erred on facts and in law in passing an ex-parte order without giving a reasonable and sufficient opportunity of being heard before passing the order u/s. 250 of the Income-tax Act.*

2) *The learned CIT(A) failed to appreciate that the Appellant was prevented by a reasonable and sufficient cause from furnishing the details and submissions before him and for which the Appellant had sought an adjournment, which had not been rejected before passing the ex-parte order. Hence the ex-parte order may be set aside and NFAC may be directed to decide the appeal on merits by giving a reasonable opportunity of hearing.*

Without prejudice, on merits

B) Addition on account of share premium under ESOP Rs. 10,51,79,000/ under section 68 of the Act.

3) *The learned CIT(A) failed to appreciate that the share premium under ESOP was received from the employees, and hence erred on facts and in law in confirming the addition made by the Deputy Commissioner of Income Tax, Circle 4(3)(1), Mumbai (AO) on account of share premium under ESOP of Rs. 10,51,79,000/- u/s. 68 of the Income-tax Act by relying on various case laws without giving opportunity to the Appellant to submit as to whether the said case laws were relevant or not. Hence, it is prayed that the addition may be directed to be deleted.*

C) Disallowance on account of rent paid Rs. 50,10,164/- under section 37 (1) of the Act.

4) *The learned CIT(A) erred on facts and in law in confirming the disallowance made by the AO on account of rent paid of Rs. 50,10,164/- without appreciating that rent paid to the said party was for use of office premises as per the*

agreement on identical facts in earlier years and the rent paid was allowed as a deduction even in earlier years. Hence, it is prayed that the disallowance on account of rent paid of Rs. 50,10,164/- as made by the AO and as confirmed by CIT(A), may be deleted.

D) Disallowance u/s. 14A-Rs. 9,76,74,570/-.

5) *The learned CIT(A) erred on facts and in law in confirming the disallowance made by the AO u/s. 14A of Rs. 9,76,74,570/- without recording an objective satisfaction as to why the working of the disallowance made by the Appellant on scientific basis of Rs. 29,20,327/- could not be accepted.*

6) *Without prejudice to the above, the learned CIT(A) erred on facts and in law in not deciding the ground (19) i.e. directing the AO to reduce the disallowance made by the Appellant of Rs. 29,20,327/- from the amount of disallowance computed by him.*

E) General

7) *The above grounds of appeal are without prejudice to one another and the Appellant craves leave to add, alter, amend, delete or modify any of the above grounds of appeal."*

3. The relevant facts in brief that the Appellant-company filed return of income for the Assessment Year 2017-18 on 30/10/2017. The case of the Appellant was selected for scrutiny. The Assessing Officer completed assessment under section 143(3) of the act vide order, dated 29/12/2019, at assessed income of INR 13,91,42,704/- as against returned loss of INR 6,89,81,66/- after making following additions/disallowances:

1. Addition of INR 10,51,79,000/- under Section 68 of the Act in respect of share premium credited to Reserve & Surplus Account.
2. Disallowance of INR 52,71,000/- in respect of rent paid.

3. Addition of INR 9,76,74,570/- under Section 14A of the Act.
4. Being aggrieved by the Assessment Order, dated 29/12/2019, the Appellant preferred appeal before CIT(A). Vide order dated 27/09/2023, the Appellant was proceeded ex-parte and the CIT(A) proceeded to dismiss the appeal preferred by the Appellant after taking into consideration material on record.
5. Being aggrieved by the ex-parte order, dated 27/09/2023, passed by the CIT(A) the Appellant has preferred the present appeal before the Tribunal on the grounds reproduced in paragraph 2 above.
6. When the appeal was taken up for hearing, the Ld. Senior Counsel appearing for the Appellant pressed into service Ground No. A-1 & A-2 challenging the passing of ex-parte order without giving reasonable opportunity of being heard to the Appellant. It was contended that the order passed by the CIT(A) was bad in law and was, therefore, liable to be set aside. The Learned Senior Counsel submitted that the CIT(A) had dismissed the appeal vide order dated, 27/09/2023, without taking into consideration the request for adjournment made by the Appellant on 25/09/2023. Inviting our attention to application for admission of additional evidence filed along with the present appeal, the Learned Senior Counsel submitted that the Appellant wanted to place reliance on additional evidence. However, since the CIT(A) dismissed the appeal without considering the request for adjournment, the Appellant was prevented from filing the additional evidence before the CIT(A). Therefore, the additional evidence was being filed before the Tribunal. Taking us through the additional evidence sought to be brought on record, the Learned Senior Counsel further submitted that the additional

evidence now been filed by the Appellant were relevant for the adjudication of the issues before the Tribunal and the same be admitted in the interests of justice.

7. Per contra, the Ld. Departmental Representative opposed the application for admission of additional evidence and submitted that sufficient opportunity was granted to the Appellant by the CIT(A) and the Assessing Officer to file relevant documents and details in support of its claim. The Ld. Departmental Representative further submitted that the CIT(A) had issued notices of hearing which were served on the Appellant. However, the Appellant kept taking adjournments. It was also pointed out that the Appellant had failed to provide any cogent reasons to show why the Appellant was not in a position to file the additional evidence before the Assessing Officer which is now sought to be filed before the Tribunal.
8. In rejoinder, the Learned Senior Counsel appearing on behalf of the Appellant submitted that during the assessment proceedings the Appellant was never confronted with the issues on which the additions/disallowances have been made by the Assessing Officer in the assessment order, and therefore, during the assessment proceedings the Appellant had no occasion to file the documents/details now being filed as additional evidence before the Tribunal.
9. We have considered the rival submissions and perused the material on record including the order passed by the authorities below and the additional evidence. It emerges that the Assessing Officer has (a) made addition of INR 10,51,79,000/- in respect of share premium credited to Reserve & Surplus Account under Section 68 of the Act, (b) disallowed rental

expenses of INR 52,71,000/- and (c) made addition/disallowance of INR 9,76,74,570/- under Section 14A of the Act. We note that the amount credited to the share premium account was added to the income of the Appellant by invoking provision of Section 68 of the Act on the ground that neither any evidences nor any supporting documentary evidences were filed by the Appellant during the assessment proceedings. It is the case of the Appellant that the aforesaid share premium has been received from employees of the Appellant-company on the issue of share under ESOP Scheme. Additional evidence is now being filed to substantiate the aforesaid contention. Further, a part of deduction claimed for rental expenses was disallowed, inter alia, on the ground that the Appellant had failed to establish that the Appellant was using the premise since 01/04/2016 (till the date of agreement). The case of the Appellant is that the Appellant was also in occupation of the said property continuously since the immediately preceding financial year and the Appellant was now placing on record the earlier rental agreement in support of the aforesaid claim. Similarly, addition/disallowance under Section 14A was made by application of Rule 8D of the Income Tax Rules, 1962 without taking into consideration the actual monthly balances of investment since the same were not filed by the Appellant during the assessment proceedings. We note that in the Assessment Order, the Assessing Officer has noted that as and when the details of investments are filed the computation of addition/disallowance shall be rectified. The Appellant is now filing the details of investment as additional evidence. Thus, the Appellant has moved application for admission of the following additional evidence:

- i. Copy of Employees' Stock Option Scheme along with Addendum thereto (placed at page 194 to 206 of the paper-book)

- ii. Copy of Employee Stock Option Scheme – Series 3 (placed at page 207 to 209 of the paper-book)
- iii. Details of Shares issued under ESOP Series - 3(placed at page 210 to 212 of the paper-book)
- iv. Copies of Applications for exercise of Stock options along with copy of cheque issued by employees (placed at page 213 to 258 of the paper-book)
- v. Copies of Confirmation from employees of they having subscribed for shares under Employees Stock Option Scheme (placed at page 259 to 263 of the paper-book)
- vi. Form 16 issued to employees to show their capacity to invest (placed at page 264 to 279 of paper-book)
- vii. Copy of Appellant's bank account wherein cheques issued by employees were deposited (placed at page 280 to 286 of paper-book)
- viii. Copy of Agreement entered into with JM Financial Properties and Holdings Ltd. dated 27th April, 2015 (placed at page 287 to 297 of paper-book)
- ix. Details of Rent and other charges paid (placed at page 298 to 298 of paper-book)
- x. Ledger account of JM Financial Properties and Holdings Ltd. in the books of the appellant (placed at page 299 to 303 of paper book)
- xi. Copy of Bank Statements showing debit of payments made to JM Financial Properties and Holdings Ltd. (placed at page 304 to 309 of paper-book)
- xii. Copy of Annual Accounts of JM Financial Properties and Holdings Ltd. wherein rent and other charges received from the appellant is reflected (placed at page 310 to 328 of paper-book)
- xiii. Details of business services shares received by JM Financial Properties and Holdings Ltd. (placed at page 329 to 329 of paper-book)
- xiv. Copies of Notices received from the office of

Commissioner of Income Tax (Appeals)/Assessing Officer
by the appellant at the rented premises from 1st April,
2016 to 19th September, 2016 (placed at page 330 to
336 of paper-book)

xv. Working of disallowance u/s. 14A with respect to
investments which have yielded dividend income (placed
at page 337 to 337 of paper-book)

10. Having perused the additional evidence we find that the same goes to the root of the matter and is relevant for the adjudication to the issues raised in the present appeal. Accepting the explanation furnished by the Appellant, we accept the submission of the Appellant and allow the application for admission of additional evidence.
11. We note that the Appellant had sought adjournments before the CIT(A) and failed to file relevant documents/details/submission despite issuance of various notices. Therefore, the Appellant was proceeded ex-parte. However, we find that the last three notices sent on 10/08/2023, 17/08/2023 and 25/08/2023 were issued to the Appellant within a period of 15 days. Therefore, in the interest of justice, we are inclined to grant the Appellant another opportunity to the Appellant. Therefore, subject to deposit of cost of INR 10,000/- with Prime Minister National Relief Fund within a period of 15 days from the date of this order, we set-aside the ex-parte order dated 27/09/2023, passed by the CIT(A) and remand all the three issues raised in the present appeal back to the file of the Assessing Officer for denovo adjudication after taking into consideration the additional evidence furnished by the Appellant is allowed. Accordingly, Ground No. A-1 & A-2 raised by the Appellant are allowed while all the other grounds raised by the Appellant are disposed off as being infructuous.

12. In result, the present appeal preferred by the Assessee is allowed for statistical purposes.

Order pronounced on 29.04.2024.

Sd/-
(Om Prakash Kant)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 29.04.2024
Alindra, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT,
Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai