

IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH 'C', KOLKATA

[Before Dr. Manish Borad, Accountant Member &
Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 79/Kol/2024
Assessment Year : 2016-17

Shree Anjani Sarees Private Limited PAN: AAKCS 8068 F Appellant	vs	DCIT, Circle-7(1), Kolkata Respondent
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Date of Hearing	16.04.2024
Date of Pronouncement	29.04.2024
For the Assessee	Akkal Dudhwewala, AR
For the Revenue	Archana Gupta, Addl. CIT, Sr. DR

ORDER

Per Sonjoy Sarma, JM:

This appeal of the assessee for the assessment year 2016-17 is directed against the order dated 24.11.2023 passed by the Id. Commissioner of Income-tax, Appeals, NFAC, Delhi [hereinafter referred to as 'the Id. CIT(A)'].

2. Brief facts of the case are that assessee-company is engaged in the business of trading in fabrics and sarees. A survey operation was conducted by the Income Tax Department on the premises on 12.10.2015. During the course of survey undertook physical stock taking of fabrics and sarees found from the office premises and alleged discrepancy of Rs. 2,47,24,399/- was recorded by AO between the value of physical stock taken at the time of survey and the stock found in the books of accounts on the date of survey. The assessee-company filed its return of income for the A.Y. 2016-17 declaring total income of Rs. 1,23,58,190/-. Thereafter, income of

the assessee assessed u/s 143(3) of the Act on 27.12.2018 at Rs. 3,91,17,470/- thereby making an addition of Rs. 2,67,59,280/- on account of undisclosed stock of Rs. 2,47,24,399/- along with GP on undisclosed stock of Rs. 20,34,881/-.

3. Dissatisfied with the above order, assessee filed an appeal before the ld. CIT(A). The ld. CIT(A) after hearing the appeal of the assessee passed a speaking order on 08.11.2019 restricted the addition to the extent of Rs. 30,20,362/- as against the addition made by AO of Rs. 2,67,59,280/- granting relief to the assessee of Rs. 2,37,38,918/-.

4. Aggrieved by the order of ld. CIT(A), revenue went into appeal before the Tribunal and assessee also filed cross-objection regarding the issue of partial addition made by ld. CIT(A) while passing the impugned order. The Tribunal after hearing the case of the revenue as well as cross-objection of the assessee vide order dated 21.04.2021 granting further relief to the assessee restricting the addition at Rs. 14,36,702/- on account of discrepancies in stock plus G.P. rate at 6.74% of which total comes to Rs. 15,33,538/-. After passing the order of Tribunal, the ld. AO accordingly given the appeal effect granting relief to the assessee of Rs. 2,52,25,742/- as against the addition made by the AO of Rs. 2,67,59,280/- restricting the addition of Rs. 15,33,538/-. During the intervening time, the ld. AO, NFAC however passed an order u/s 271(1)(c) with regard to the sum of Rs. 30,20,362/- ignoring the fact that relief granted by Hon'ble ITAT, Kolkata as in the case of assessee without giving any proper opportunity of being heard to the assessee. However, a show cause notice was issued on 24.06.2021 to furnish

the reply by 28.06.2021. However, the assessee could not furnish the response due to non-functioning of e-portal properly. In spite of that the ld. AO passed the penalty order u/s 271(1)(c) of the Act.

5. Aggrieved by the above order assessee went into appeal before the ld. CIT(A) where the appeal of the assessee was partly allowed. The ld. CIT(A) passing the impugned order direct the AO confined to the extent levied penalty as leviable on the concealed income as determined by the Tribunal in the case of assessee.

6. Against the above order assessee is in appeal before this Tribunal. The ld. AR stated that at the time of passing of penalty order, assessee could not furnish to response due to non-functioning of e-portal properly. However, the ld. AO, NFAC without looking into the matter has passed order u/s 271(1)(c) of the Act against the assessee which is bad in law as the assessee did not get any opportunity of being heard liable to be set aside. It is further submitted that there is no concealment of income on the part of assessee as alleged by the AO while passing the impugned penalty order against the assessee. He further stated that the impugned addition as made in the case of assessee represent presumptuous disallowance made on estimated basis which is clearly apparent from the order of ld. CIT(A) and Tribunal's order. Therefore, there was no concealment of income nor had the assessee furnished any inaccurate particulars. Therefore, the assessee states that there is no deliberate act on the part of assessee. Accordingly, penalty imposed as in the case of assessee is uncalled for and needs to be quashed.

7. We after hearing the rival submission of the parties and perusing the material available on record find that the Tribunal vide order dated 21.04.2021 restricted the alleged addition at Rs. 14,36,702/- on account of discrepancies in stock applying G.P. rate at 6.74% on stock which total comes to Rs. 15,33,358/-. However, NFAC while passing the impugned order ignoring the fact that relief granted by the Tribunal as in the case of assessee. Moreover, from the findings vide order dated 21.04.2021, it is clearly reflected that the addition had made by assessing officer was passed on estimation only. As and when fact or allegation order has passed on estimation cannot said to be correct only, it can be incorrect also. Therefore, in the facts and circumstances of the case, penalty was levied by assessing officer only on estimated basis which is not correct and not in accordance with law. We, therefore, levying penalty in the case of assessee is not correct. Accordingly, impugned penalty order passed by the authorities below is hereby set aside. In terms of the above, the appeal of the assessee is hereby allowed.

8. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 29.04.2024.

Sd/-

Sd/-

(Dr. Manish Borad)
Accountant Member

(Sonjoy Sarma)
Judicial Member

Dated: 29.04.2024
Biswajit, Sr. PS

Copy of the order forwarded to:

1. Appellant- Shree Anjani Sarees Private Limited, P-16, Om Tower, Kalakar Street, 5th Floor, Kolkata – 700007.
2. Respondent – DCIT, Circle-7(1), Kolkata.
3. Ld. CIT
4. Ld. CIT(A)
5. Ld. DR

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By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata