

IN THE INCOME TAX APPELLATE TRIBUNAL, "B" BENCH
MUMBAI
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &
MS PADMAVATHY S, ACCOUNTANT MEMBER

ITA. No. 4268/MUM/2023
(A.Y.2014-15)

Barbarian Power Gym Pvt Ltd, 203/204B Wing Nebulla, Lokhandwala Complex, Andheri (W), Mumbai-400053.	Vs.	ITO Ward-9(2)(1), Room No. 601-A, 6 th Floor, Aayakar Bhavan, M.K.Road, Mumbai-400020.
PAN/GIR No. AACCB5694E		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

Assessee by	None
Revenue by	Shri Laxmi Kant.Sr.DR

सुनवाई की तारीख/Date of Hearing	06.05.2024
घोषणा की तारीख/Date of Pronouncement	08.05.2024

ORDER

PER PAVAN KUMAR GADALE, JM:

The assessee has filed the appeal against the order of the National Faceless Appeal Centre, Delhi, (NFAC)/ CIT(A) against the order u/sec143(3) and u/sec250 of the Act. The assessee has raised the following grounds of appeal:

Addition u/s 68 of the Act Rs. 28,09,000/-

- 1. The learned CIT(A) erred in upholding the addition of Rs. 28,09,000/- u/s 68 of the Act by passing an exparte order without appreciating that the said amount was not a*

unsecured loan but advance received during the year, however as services against the same was rendered in subsequent F.Y.: 2016-17, accordingly the invoice was raised and accounted for the same in subsequent year.

2. *Without prejudice the above the same amount is subjected to tax twice once in F.Y. 2013-14 and again F. Y. 2016-17.*
3. *The Assessing Officer ought to have issued notice u/s 133(6) of the Act to the said party in order to verify the genuineness of the transaction.*

Addition u/s 40(a)(ia) of the Act Rs. 32,000/-

4. *The learned CIT (A) erred in upholding the addition of Rs. 32,000/- by passing an exparte order, on the ground that TDS was not deducted without appreciating that payee is assessed to tax.*
5. *The Id CIT(A) erred in not providing adequate of opportunity of hearing by passing exparte order.*

6. The Assessee craves leave to add, alter modify or delete one or more ground before or at the time of hearing of Appeal .

2. The brief facts of the case are that, the assessee company is engaged in the business of fitness consultancy, corporate fitness, Personal training, franchising and setting up gym. The assessee has filed the return of income for the A.Y.2014-15 on 26.03.2016 disclosing a total income of Rs. 29,85,880/- and the Book profit of Rs. 27,85,864/-computed u/sec 115JB of the Act. Subsequently the case was selected for scrutiny under CASS and notice u/sec 143(2) and U/sec 142(1) of the Act are issued. In compliance to the notice, the Ld. AR of the

assessee appeared from time to time and submitted the details and the case was discussed. The Assessing Officer (AO) found that the assessee in F.Y. 2013-14 has obtained unsecured loan of Rs. 28,09,000/- from Mr. Abhinandan Lodha and the AO has called for the details of unsecured loan, copy of confirmation of loan creditor, copy of bank statement, return of income and financial statements of the loan creditor and there was no response. The AO considering the facts has issued show cause notice dated 23.12.2016 to provide the details. Since the assessee could not submit the details and evidences in support of obtaining unsecured loan, the AO has treated the amount as unexplained cash credit u/sec 68 of the Act and made a addition of Rs.28,09,000/-. On the second disputed issue, the AO found that the assessee has made various payments towards expenditure without deduction of TDS, hence the AO has invoked the provisions of Sec 40a(i)(a) of the Act and made disallowance of Rs.32,000/-. Finally the AO has assessed the total income of Rs.58,26,880/- and passed the order u/sec 143(3) of the Act dated 27.12.2016.

3. Aggrieved by the order, the assessee has filed an appeal before the CIT(A), whereas the CIT(A) has considered the grounds of appeal, statement of facts and findings of the AO and has issued notices of hearing and since there was no compliance by the assessee to notices. Therefore the CIT(A) considering the information on record has confirmed

the action of the A.O and dismissed the appeal. Aggrieved by the order of the CIT(A), the assessee has filed an appeal before the Hon'ble Tribunal. None appeared on behalf of the assessee.

4. We heard the Ld. DR submissions and perused the material on record. Prima-facie the CIT(A) has passed the order considering the fact that there is no appearance in spite of providing adequate opportunity of hearing and the notices were issued. Whereas the CIT(A) was of the opinion that the assessee is not interested in prosecuting the appeal and dismissed the appeal ex-parte confirming the action of the assessing officer. The Ld. CIT(A) has issued the notices of hearing but there was no response and thus the Ld.CIT(A) came to a conclusion that the assessee is not interested and decided the appeal based on the information available on record. Whereas the assessee has raised grounds of appeal challenging the additions of the A.O and there could be various reasons for non appearance which cannot be overruled. Therefore, considering the principles of natural justice shall provide with one more opportunity of hearing to the assessee to substantiate the case with evidences and information. Accordingly, set aside the order of the CIT(A) and remit the entire disputed issues to the file of the CIT(A) to adjudicate afresh and the assessee should be provided adequate opportunity of hearing and shall cooperate in submitting the information for early

disposal of the appeal. Accordingly, we allow the ground of appeal of the assessee for statistical purposes.

5. In the result, the appeal filed by assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on 08.05.2024.

Sd/-
(MS. PADMAVATHY S)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated: 08/05/2024

KRK

Copy of the Order forwarded to:

1. The Appellant,
2. The Respondent
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,
(Dy./Asstt. Registrar)ITAT,
Mumbai