

आयकर अपीलीय अधिकरण
कोलकाता 'एसएमसी' पीठ, कोलकाता में
IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'SMC' BENCH, KOLKATA

डॉ. मनीष बोर्ड, लेखा सदस्य
एवं
श्री प्रदीप कुमार चौबे, न्यायिक सदस्य
के समक्ष
Before

DR. MANISH BORAD, ACCOUNTANT MEMBER
&
PRADIP KUMAR CHOUBEY, JUDICIAL MEMBER

I.T.A. No.: 20/KOL/2024
Assessment Year: 2017-18

Hardsoft Exim Pvt. Ltd......*Appellant*
[PAN: AACCH 8177 J]

Vs.

ITO, Ward-5(4), Kolkata.....*Respondent*

Appearances:

Assessee represented by: Siddharth Agarwal, Adv.

Department represented by: Nicholas Murud, CIT, D/R.

Date of concluding the hearing : April 29th, 2024

Date of pronouncing the order : May 13th, 2024

ORDER

Per Pradip Kumar Choubey, Judicial Member:

This appeal filed by the assessee pertaining to the Assessment Year (in short 'AY') 2017-18 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the 'Act') by Id. Commissioner of Income-tax (Appeals)-NFAC, Delhi [in short Id. 'CIT(A)'] dated 08.12.2023 arising out of the assessment order framed u/s 144 of the Act dated 01.12.2019.

2. The brief facts of the case of the assessee are that the assessee e-filed its return of income for the A.Y.: 2017-18 on 07.03.2018 declaring a total income of Rs. 5,600/-. The case was selected for scrutiny under the 'Limited Scrutiny' criteria. The reasons for selection of the case for scrutiny were as below—

(a) Low income in comparison to high loans/advances/Investment in shares appearing in the balance sheet.

(b) Expenses debited to the P & L a/c for earning exempt income as per schedule BP of ITR is significantly lower as compared to investments made to earn exempt income.

2.1. Notices u/s 143(2) and 142(1) of the Act were issued and served upon the assessee. In response to the said notices, the assessee complied with by filing various documents on 30.07.2019 through e-proceedings. Then the Assessing Officer (in short ld. 'AO') completed the assessment proceedings by passing an *ex-parte* order u/s 144 of the Act dated 01.12.2019 wherein he made an addition of Rs. 27,91,299/-, being 1% of investment of Rs. 27,91,29,900/- on account of alleged income out of the investment made.

2.3. Notice was issued to the assessee on 24.08.2018. The assessee company failed to comply with the notices. Ultimately the order was passed by the AO in absence of the assessee holding that due to non-compliance on the part of the assessee company, investment could not be identified and the income could not be verified, hence 1% of investment of Rs. 27,91,29,900/- i.e. Rs. 27,91,299/- is treated as income of the assessee company out of the investment made and the same is added back to the total income of the assessee company. The said order was challenged by the assessee before ld. CIT(A) but before ld. CIT(A) also the assessee did not appear as a result of which the appeal had been dismissed.

Being aggrieved and dissatisfied with the appeal order, the assessee is in appeal before us.

3. Ld. Counsel for the assessee before entering into the merit of the case has only submitted that the order passed by ld. CIT(A) is *ex-parte* order without giving opportunity to him and according to him he has not been served any notice. His prayer is to give him a chance to proceed the case.

4. Ld. D/R opposes the contention of ld. Counsel for the assessee by saying that the assessee himself permitted the proceeding to go an *ex-parte* as after even service of notice he did not appear.

5. We have perused the record and find that before the AO as well as ld. CIT(A) the assessee did not appear. It has been contended by ld. CIT(A) that he had not been served any notice. The ground taken by the assessee is that the order passed u/s 144 of the Act is vitiated in law for valuation of principles of natural justice and not for affording reasonable opportunity of hearing. It is clear from the order of the AO that investment could not be identified and income from the said investment could not be verified due to the non-compliance on the part of the assessee company. It admits of no doubt that assessment order and the confirmation of the assessment order have been passed in absence of the assessee. The dispute is the verification and the identification of the investment. Keeping in view the above facts and for the ends of justice, we are of this opinion that to provide an opportunity to the assessee to submit his case before ld. CIT(A) by setting aside the order of ld. CIT(A) and the AO. The assessee has given an opportunity to submit all his documents and whatever he has before the ld. CIT(A) in support of his case without taking any delay. Any dilatory tactics shall go against the assessee. With this observation, the order of ld. CIT(A) is set aside and the case is remanded back to the file of ld. CIT(A) for adjudication afresh after providing reasonable opportunity of being heard to the assessee.

6. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 13th May, 2024.

Sd/-

[Manish Borad]

Accountant Member

Dated: 13.05.2024

Bidhan (P.S.)

Sd/-

[Pradip Kumar Choubey]

Judicial Member

Copy of the order forwarded to:

- 1. Hardsoft Exim Pvt. Ltd., C/o Subash Agarwal & Associates, Advocates Siddha Gibson, 1, Gibson Lane, Suite 213, 2nd Floor, Kolkata, West Bengal, 700069.**
- 2. ITO, Ward-5(4), Kolkata.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

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By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata