

**IN THE INCOME TAX APPELLATE TRIBUNAL “F” BENCH MUMBAI**  
**BEFORE SHRI PAVAN KUMAR GADALE, JUDICIALMEMBER**  
**AND**  
**SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.4428/MUM/2023**  
**Assessment Year: 2010-11**

Jasum Real Estate Private Limited Office No.101, Agarwal Corner, Plot No.21, Sector 21, Nerul, Navi Mumbai – 400 076. (PAN : AACCCJ2304H)	Vs.	Income Tax Officer – 1(2)(1), Mumbai
<b>(Appellant)</b>		<b>(Respondent)</b>

**Present for:**

Assessee : Shri Bhupendra Shah, FCA  
Revenue : Ms. Rajeshwari Menon, Sr. DR

Date of Hearing : 15.05.2024  
Date of Pronouncement : 17.05.2024

**ORDER**

**PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi, vide order no. ITBA/NFAC/S/250/2023-24/1053514640(1), dated 02.06.2023, passed against the assessment order by Income Tax Officer-1(2)(1), Mumbai, u/s.143(3) r.w.s. 147of the Income-tax Act, 1961 (hereinafter referred to as the “Act”), dated 30.12.2017 for AY 2010-11.

2. Grounds taken by the assessee are reproduced as under:

*1) On the facts and circumstances of the case and in law, the Authorities below have erred in re-opening of the assessment u/s 147 of the I T Act as there was no reason to believe with the AO that any income had escaped assessment as provided under the provisions of section 147 of the IT Act and hence the re-opening of the assessment was bad in law and against the provisions of Income Tax Act, 1961 and rules made thereunder.*

*2) On the facts and circumstances of the case and in law the authorities below have erred in making an addition of Rs. 4,39,53,000/- u/s 68 of the IT Act, and the reasons assigned for doing so was wholly wrong, irrelevant and contrary to the facts of the case, particularly despite having submitted all the relevant details giving therein the name, address and PAN of the lending parties and therefore this is not in accordance with the provisions of Income Tax Act, 1961 and rules made thereunder and against the principles of natural justice.*

*3) On the facts and circumstances of the case and in law, the Authorities below have erred in levying the interest u/s 234B and 234C of the IT which was wholly wrong, and against the provisions of Income Tax At, 1961 and rules made thereunder.*

*4) On the facts and circumstances of the case and in law, the Authorities below have erred in initiating the penalty proceedings u/s 271(1)(c) of the Income Tax Act, 1961 which were wholly wrong, irrelevant, and not in accordance with the facts and circumstances of the case as no income is concealed nor any inaccurate particulars were furnished.*

3. Brief facts of the case as culled out from records are that the assessee is engaged in the business of trading in textile goods and investment. Assessee filed its return of income on 23.02.2011 reporting total income at Rs.319/-. Subsequently, case of the assessee was reopened by issuing notice under section 148 dated 27.03.2017 by recording the reasons to believe that assessee had raised an amount of Rs.4,39,53,000/- towards share capital including share premium by issuing 8,97,000 shares at premium of Rs.490/- having face value of Rs.10/- per share. AO called for explanation and details in respect of the aforesaid transaction and after considering the submissions made by the assessee held that assessee had failed to prove the bonafides of the share subscribing companies. He thus, treated the share application money as un-explained cash credit u/s. 68 of the Act and added it to the total income. Aggrieved, assessee went in appeal before the CIT(A).

4. The appeal before the ld. CIT(A) was instituted on 19.01.2018 against the impugned assessment order dated 30.12.2017. While disposing this appeal, ld. CIT(A) noted that assessee was provided multiple opportunities of being heard but it failed to make any

submission in response to the hearing notices. He thus, dismissed the appeal of the assessee for non-prosecution. Aggrieved, assessee is in appeal before the Tribunal.

5. Before us, the ld. Counsel for the assessee at the outset submitted that all the submissions had been made by the assessee both before the AO as well as the ld. CIT(A). Before the ld. CIT(A), submissions were made in the regime of physical hearings. Subsequently, in the year 2020, the first appellate proceedings moved into faceless regime. Ld. CIT(A) has not taken into cognizance the proceedings undertaken during the physical hearings. Further, he submitted that the notices as referred by the ld. CIT(A) in his order were sent on the email ID which was a registered one but of an employee of the assessee who had left from the employment of the assessee, because of which, the hearing could not be attended. Assessee furnished an affidavit in this respect, placed on record. Owing to these facts, it was submitted that the matter may be remanded back to the file of ld. CIT(A) for *denovo* meritorious adjudication by taking into consideration the submissions already on record made during the course of physical hearings. It was also prayed that reasonable opportunities may be given to the assessee to make any further submissions, if so required.

6. Per contra, ld. Sr.DR raised no objection on the prayer made by the ld. Counsel.

7. We have heard the rival contentions and perused the material on record. We note that assessee had made its submissions alongwith relevant documentary evidences in the course of assessment proceedings, fact of which is noted in the impugned assessment order. However, an adverse view had been taken by the ld. AO for which the matter went into appeal. At the first appellate stage, there are lapses on the part of the assessee to attend the hearings for an effective and

meritorious disposal of its appeal. Also, ld. CIT(A) has dismissed the appeal for lack of prosecution.

7.1. Section 250 of the Act provides for procedure to be adopted while disposing of the appeal by the Ld. CIT(A). Sub-section (4) of section 250 of the Act provides that the Ld. CIT(A) may, before disposing of any appeal, make such further inquiry as he thinks fit, or may direct the Assessing officer to make further inquiry and report the result of the same to the Commissioner (Appeals). Further, sub-section (6) provides that the CIT(A) shall pass an order in writing and shall set the points for determination, the decision thereon and the reasons for the decision. Keeping in mind the provision of sections 250 of the Act, it is incumbent upon the Ld. CIT(A) to pass a speaking order on the merits of the case by examining, verifying and analyzing the material on record.

7.2. Considering the submissions made before us, in the interest of justice and fair play, we find it appropriate to remit the matter back to the file of ld. CIT(A) for *denovo* meritorious adjudication on the grounds of the appeal taken at the first appellate stage. We also direct the assessee to be diligent and cooperative in attending the hearings and make its submissions for expeditious and effective disposal of the appeal. It should not seek adjournments unless warranted by compelling reasons.

7.3. Since the matter is restored to the file of Ld. CIT(A) for meritorious adjudication by passing a speaking order in terms of our observations made hereinabove, we are not expressing any views on the merits of the case so as to limit the appellate procedure before the Ld. CIT(A). The observations herein made by us in remanding the matter back to the file of Ld. CIT(A) will not impair or injure the case of

the Revenue nor will it cause any prejudice to the defense/explanation of the assessee.

8. In the result, appeal of the assessee is allowed for statistical purposes.

Order is pronounced in the open court on 17 May, 2024

Sd/-  
(Pavan Kumar Gadale)  
Judicial Member

Sd/-  
(Girish Agrawal)  
Accountant Member

***Dated: 17 May, 2024***

*MP, Sr.P.S.*

**Copy to :**

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt.Registrar)  
ITAT, Mumbai