

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER,**

**ITA No.2911/Mum/2023
(A.Y. 2014-15)**

Sriman Stocks Management Pvt. Ltd. 302/B, Garden Court, Temba Hospital Road, Bhayander West, Thane, Maharashtra – 401101	Vs.	ITO Ward-2(1) B Wing, Room No. 26, 6 th Floor, Ashar IT Park, Road No. 16, Wagle Industrial Estate, Thane, Maharashtra – 400604
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AANCS3834N		
Appellant	..	Respondent

Appellant by :	Ms. Ridhisha Jain
Respondent by :	Krishna Kumar

Date of Hearing	09.05.2024
Date of Pronouncement	17.05.2024

आदेश / O R D E R

Per Amarjit Singh (AM):

This appeal filed by the assessee is directed against the order passed by the Id. CIT(A) NFAC for A.Y. 2014-15. The assessee has raised the following grounds before us:

- “1. On the facts & in the circumstances of the case and in law the Hon'ble CIT (A) erred in passing an ex parte order and confirming the addition made by the Id. Assessing Officer and the reasons assigned for doing so are wrong and contrary to the provisions of Income Tax and rules made thereunder*
- 2. Without prejudice to the other grounds of appeal, On the facts and circumstances of the case and in law, the Hon'ble CIT(A) erred in dismissing the appellant's appeal in limine without consideration of the subject issues on merit. Therefore, the appeal may be restored to the Hon'ble CIT(A) for fresh adjudication.*

3. *On the facts and in the circumstances of the case and in law the Hon'ble CIT(A) erred in upholding validity of issuing notice u/s. 148 of the IT Act 1961 and the reason assigned for doing so are wrong and contrary to the provision of Income Tax Act and rules made there under.*
4. *On the facts and in the circumstances of the case and in law the Hon'ble (ITA) erred in upholding the addition made by the Ld AO of Rs. 4,30,000/- on account of unsecured loan taken by the assessee in the impugned year from M/s. Lunkad Textiles Pvt Ltd as unexplained cash credit u/s 68 of the IT act 1961 and the reason assigned for doing so are wrong and contrary to the Provisions of Income Tax Act and Rules made there under.*
5. *On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) erred in upholding the penalty initiated by the Ld. AO u/s. 271(1)(c) of the IT Act 1961 and the reason assigned for doing so are wrong and contrary to the provision of Income Tax Act and rules made there under.*
6. *Your Appellant crave, leave to add, alter, amend or modify any or all grounds of appeal on or before the date of hearing.”*

2. The appeal filed by the assessee before the ITAT was time barred by 1 day. The ld. Counsel submitted that the delay was happened because of the last date of filing was being Sunday. Considering the submission of the assessee the delay in filing the appeal by 1 day is condoned.

3. Fact in brief is that return of income declaring nil income was filed on 26.12.2015. The same was processed u/s 143(1) of the Act. Subsequently, on the basis of information received from the DDIT(Investigation) Unit 7(4), Mumbai that assessee has obtained accommodation entries from the bogus entities controlled and operated by Shri Vipul Bhatt, the assessing officer reopened the case by issuing of notice u/s 148 of the Act on 11.04.2014. On verification of the information received the assessing officer observed that assessee has taken accommodation entry of loan amount of Rs.4,30,000/- from M/s Lunkad Textiles Pvt. Ltd. during the year under consideration. The AO has stated that merely producing bank account and claiming that payment were made through banking channel was not enough to prove

the genuineness of the said transaction, therefore, the assessing officer treated the same as bogus accommodation entry and added the same to the total income of the assessee as unexplained cash credit u/s 68 of the Act.

4. The assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee for not making any compliance to the number of notices of hearing issued during the course of appellate proceedings.

5. Heard both the sides and perused the material on record. The assessing officer has completed assessment u/s 143(3) r.w.s 147 of the Act by making addition of Rs.4,30,000/- as unexplained cash credit u/s 68 of the Act on account of not proving genuineness of the loan transaction as discussed supra in this order. The ld. CIT(A) has dismissed the appeal of the assessee on the ground that assessee failed to make compliance to the notices of hearing issued at the time of appellate proceedings before the First Appellate Authority without adjudicating on merit. Before us the ld. Counsel submitted that the counsel of the assessee could not compliance during the course of appellate proceedings before the ld. CIT(A) since the ld. counsel was not available and he was at his native place because of some urgent personal affairs. After taking into consideration the material available on record we find that neither the ld. CIT(A) has decided the appeal of the assessee on merit after taking into consideration the material placed in the assessment record nor the assessee has made compliance during the course of appellate proceedings. We consider that Section 250(6) of the Act contemplate that ld. CIT(A) would determine point in dispute and therefor record reason on such point in support of his conclusion. The ld. CIT(A) ought to have adjudicated the case on merit after considering the material placed on record as contemplated in the provision of Sec.

250(6) of the Act. In the light of above facts and circumstances we consider it appropriate to restore this matter back to the Id. CIT(A) for adjudication on merit as after affording adequate opportunity to the assessee. The assessee is also directed to make compliance before the Id. CIT(A) during the course of set aside proceedings without any failure. Accordingly, the appeal of the assessee is allowed for statistical purposes.

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

Order pronounced in the open court on 17.05.2024

Sd/-
(Vikas Awasthy)
Judicial Member

Sd/-
(Amarjit Singh)
Accountant Member

Place: Mumbai

Date 17.05.2024

Rohit: PS

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

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

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

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