

IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, KOLKATA

Before

Dr. Manish Borad, Accountant Member

&

Shri Pradip Kumar Choubey, Judicial Member

I.T.A. No.380/KOL/2024

Assessment Year: 2011-12

Bindu Vanijya Pvt. Ltd. 8/1, Princep Street, 3 rd Floor, Room No. 305, Kolkata- 700072. (PAN: AAECB0295K)	Vs.	Income Tax Officer, Ward-5(1), Kolkata.
(Appellant)		(Respondent)

Appearances by:

Shri A. K. Tibriwal, FCA appeared for the Appellant

Shri L. N. Dash, Addl. CIT (DR) appeared for Respondent.

Date of concluding the hearing : 09.05.2024

Date of pronouncing the order : 28.05.2024

ORDER

Per Manish Borad, Accountant Member:

This appeal filed by the assessee pertaining to the Assessment Year (in short “AY”) 2011-12 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), National Faceless Appeal Centre (NFAC), Delhi [in short Ld. “CIT(A)”] dated 28.12.2023 arising out of the assessment order passed u/s 144/147 of the Act by ITO, Ward-5(3), Kolkata (in short “AO”) dated 14.12.2018.

2. Though the assessee has raised as many as 10 grounds of appeal but on the very first ground of appeal it agitates against the dismissal of the assessee’s appeal by the Ld. CIT(A0 without allowing proper and reasonable opportunity of hearing violating the principles of natural justice.

3. The assessee is an Indian company engaged, inter alia, in the business of trading of clothes, sarees etc. The assessee had filed its return of income electronically on 26.09.2011 showing total income of Rs.432/-. However, to the utter surprise of the assessee, an intimation was communicated by the Income-tax Department stating that a demand of Rs.20,76,490/- was remaining outstanding against the assessee for the AY 2011-12. On enquiry, it was known to the assessee that an order u/s. 144/147 of the Act was passed on 14.12.2018 for the AY 2011-12. On perusal of the same, the assessee made to know that the assessment was reopened by issuing notice u/s. 148 of the Act on 27.03.2018 which also was not served on the assessee. Further, the AO had added back a sum of Rs.35,00,000/- on the basis of report received from the Investigation Wing of the Department that the said amount was received by the assessee from one M/s. Barbaric Marketing Pvt. Ltd. The assessee aggrieved with this order preferred an appeal before the Ld. CIT(A), who confirmed the action of Ld. AO by holding that the assessee is not interested in prosecuting the appeal and hence, he dismissed the appeal of the assessee ex parte as unadmitted. Aggrieved, assessee is now in appeal before this Tribunal.

5. We have heard both the representatives and carefully perused the material placed before us. We notice that the Ld. CIT(A) passed the appellate order ex parte by observing that the assessee was provided many opportunities but no compliance was made. The details of these opportunities was given in the appellate order at para 4.1. Thereafter, he applying the ratio of the decision in the case of CIT Vs. Multiplan India (P) Ltd. 38 ITD 320, dismissed the appeal of the assessee as unadmitted.

6. From the perusal of the order of the Ld. CIT(A), we note that case was listed on 8 different occasions when no compliance was made by the assessee and thus, after referring to certain case laws has dismissed the appeal of the assessee as unadmitted. In this respect, we note that Section 250(6) cast a duty on Ld. CIT(A) to pass an order in appeal which should state the points for determination and a decision as well as the reason for arriving at such decision. In the present case before us, even though assessee has made its submissions along with supporting documents before the Ld. AO which are on record, compliance has not been met by the Ld. CIT(A) while disposing of the appeal by not looking into the assessment records. On a specific query by the Bench to the Ld. Counsel as to why the matter be not remitted back to the file of Ld. CIT(A), nothing objectionable was submitted. Even Ld. DR had no objection on the same. Accordingly, we find it proper to remit the matter back to the file of Ld. CIT(A) for meritorious disposal of the grounds taken by the assessee, by passing a speaking order. Needless to say that assessee be given reasonable opportunity of being heard to make any further submission it wants to make in support of its grounds of appeal. Accordingly, grounds taken by the assessee are allowed for statistical purposes.

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

Order is pronounced in the open court on 28th May, 2024.

Sd/-
[Pradip Kumar Choubey]
Judicial Member

Sd/-
[Dr. Manish Borad]
Accountant Member

Dated: 28th May, 2024

J.D. Sr. PS.

Copy of the order forwarded to:

1. **Appellant** –
2. **Respondent** –
3. CIT(A), NFAC, Delhi
4. CIT
5. Departmental Representative
6. Guard File.

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches