

**IN THE INCOME TAX APPELLATE TRIBUNAL “F” BENCH MUMBAI
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

AND

SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

**ITA No.78/MUM/2024
Assessment Year: 2015-16**

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| Surbhit Impex Private Limited 412/413, Mandvi Navjeevan, Kazi Sayed Street, Masjid Bunder, Mumbai – 400003 (PAN : AADCS4949J) | Vs. | Deputy Commissioner of Income Tax – 8(2)(2), Mumbai |
| (Appellant) | | (Respondent) |

Present for:

Assessee : Shri Shashi Bekal
Revenue : Ms. Rajeshwari Menon, Sr.DR

Date of Hearing : 22.05.2024
Date of Pronouncement : 29.05.2024

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/250/2023-24/1054372002(1), dated 14.07.2023 passed against the assessment order by the Deputy Commissioner of Income Tax, Circle 8(2)(2), Mumbai, u/s.143(3) of the Income-tax Act(hereinafter referred to as the “Act”), dated 19.12.2017 for Assessment Year 2015-16.

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

“1. On facts and circumstances of the case and in law, the Ld. National Faceless Appeal Centre (NFAC) has erred in dismissing the appeal of the assessee ex parte, whereas the NFAC should have decided the appeal on the merits of the case.

2. On facts and circumstances of the case and in law, the Ld. NFAC erred in not considering the grounds of appeal, statement of facts and paper book on record while deciding the appeal.

3. Without prejudice to the above, on the facts and circumstances of the case and in law, the Ld. NFAC has erred in dismissing the appeal of the assessee when the assessee did not receive any real-time alert on the mobile phone or email in accordance with CBDT Notification dated 4 of 2017 dated April 03, 2017.

4. Without prejudice to the above, on facts and circumstances of the case and in law, the Ld. NFAC erred in dismissing the appeal of the Assessee and confirming the decision of the Ld. Assessing Officer (AO) wherein the Ld. AO has erred in treating the sum of Rs. 57,08,625/- i.e. trade advance as unexplained cash credits and added the same under section 68 of the Income-tax Act, 1961.”

3. Brief facts of the case as culled out from records are that the assessee filed its return of income on 30.09.2015 reporting a total income at Rs.19,38,800/-. In the course of assessment, it was observed that assessee had received unsecured loan of Rs.57,08,625/- from one Parth Tradelinks Pvt. Ltd. for which necessary details and explanations were called for. Assessee made its submissions along with response to notice u/s.133(6) of the Act. Submissions made by the assessee were considered but were found not tenable by the ld. Assessing Officer, resulting into an addition of the said amount. Aggrieved, assessee went into appeal before the CIT(A).

3.1. Ld. CIT(A) summarily dismissed the appeal of the assessee on account of non-prosecution on the part of the assessee. While dismissing the appeal, ld. CIT(A) has observed that assessee was issued and served with three notices for hearing which remained un-complied. Owing to no response from the assessee, ld. CIT(A) without

adjudicating on the grounds dismissed the appeal of the assessee. Aggrieved, assessee is in appeal before the Tribunal.

4. Before us, ld. Counsel for the assessee placed on record a paper book containing 91 pages to substantiate that all the necessary explanations and documents were on record before the ld. Assessing Officer which have not been considered while dismissing the appeal by the ld. CIT(A). He specifically referred to ground no.1 and 2 raised before us, whereby the first appeal has been dismissed ex-parte without considering the grounds, statement of facts and paper book on record. He also referred to ground no.3, whereby assessee had not received any real time alert on the mobile phone or email in accordance with CBDT notification No.4 of 2017, dated 03.04.2017. In this respect, an affidavit by the Managing Director of the assessee is placed on record explaining the reasons along with supporting documents, why the hearings before the ld. CIT(A) could not be attended.

4.1. It was thus 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. It was also prayed that reasonable opportunities may be given to the assessee to make any further submissions, if so required.

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

6. 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, duly substantiated by placing a paper book on record. 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.

6.1. 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.

6.2. 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.

6.3. 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.

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

Order is pronounced in the open court on 29 May, 2024

Sd/-
(Pavan Kumar Gadale)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 29 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