

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH, 'H': NEW DELHI**

BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER

AND

SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER

**ITA No.130/DEL/2024
[Assessment Year: 2011-12]**

Best Retail Limited, IX/160 Main Road, Kailash Nagar, Gandhi Nagar, Delhi-110031	Vs	ITO, Ward-4(1), C.R. Building, Delhi
PAN-AADCB3545K		
Assessee		Revenue

Assessee by	Ms. Airik Singla, Adv.
Revenue by	Shri Amit Katoch, Sr.DR

Date of Hearing	24.04.2024
Date of Pronouncement	24.05.2024

ORDER

PER BRAJESH KUMAR SINGH, AM,

This appeal by the assessee is directed against the order of the National Faceless Appeal Centre (NFAC), Delhi, dated 28/12/2023 pertaining to Assessment Year 2011-12.

2. The grounds of appeal raised by the assessee reads as under:-

"1. That on the facts and in the circumstances of the case and in law, Ld CIT-A erred in sustaining the order passed by Ld AO u/s 147 rws 143(3) without appreciating that the Assessment Order is bad in law, void-ab-initio and is liable to quashed.

2. That on the facts and in the circumstances of the case and in law, Ld CIT-A erred in dismissing the appeal due to the fact that the notice of hearing was not served to the

assessee due to which the fair and reasonable submissions were not made before the Ld CIT(A), hence requested to restore the matter before the Ld CIT(A) with instructions to provide and serve the notice of hearing with reasonable time to make the submissions

3. That on the facts and in the circumstances of the case and in law, Ld CIT-A erred in sustaining the order passed by Ld AO u/s 147 without appreciating that all Share Application money received is from genuine sources by the company and nothing adverse have been brought on record by the Ld AO, due to which the present impugned order deserves to be quashed and whole of the additions are required to be deleted

4. That on the facts and in the circumstances of the case and in law, Ld CIT-A erred in sustaining the order passed by Ld AO u/s 147 without appreciating that That the Ld Assessing Officer made a serious error in making the additions by violating the principles of audi-alterm pattern (Principles of Natural Justice), because the basis of additions and reasoning thereof has never been communicated to the assessee in the form of proper show cause notice. None of the material collected by the Ld AO was never provided to the assessee during the assessment proceedings

5. That on the facts and in the circumstances of the case and in law, Ld CIT-A erred in sustaining the order passed by Ld AO u/s 147 without appreciating that That the Ld Assessing Officer made a serious error in not following the due procedure to make assessment u/s 148 ie reasons along with approval not provided, back end material collected not provided, approval and recording of reasons were in mechanical in nature, and completely in violation to Hon'ble SC guidelines / instruction in GKN Driveshaft.”

3. Brief facts of the case: In this case, an order dated 24.12.2018 was passed u/s 143(3) r.w.s. 147 of the Act. In the assessment order, the following additions were made

- (i) Share Capital obtained through entry operator of Himanshu Verma Group of Cases of Rs.50,00,000/-.
- (ii) Commission @ 2% for obtaining the above accommodation entry of Rs.1,00,00,000/-

4. Aggrieved with the order, the assessee filed an appeal before the NFAC which dismissed it *in limine* on the ground that the assessee was provided with seven opportunities to furnish the details but no compliance was made.

5. During the appellate proceedings, before us, the AR submitted that no notice of hearing was served to the assessee due to which fair and reasonable submissions were not made before the NFAC and hence requested to restore the matter back to the NFAC for fresh adjudication. During the course of appellate proceedings, the AR also submitted as under:-

- i. The flagship company namely Best Textiles Ltd. was under Insolvency proceedings before Hon'ble NCLT-Delhi vide item No. (IB)-17(ND) 2018 which was admitted on 03-04-2018.
- ii. Since that the directors of the company are suspended directors and has to vacate the office of Best Textiles ltd, which was also the office of the appellant company.
- iii. As the directors don't have access to the premises, any notice sent, could not served to the appellant company, in physical mode.
- iv. Additionally, the directors were not checking the common email which was used for Best Textiles Ltd. (under insolvency proceedings) and the appellant company.
- v. Due to the above reasons, the reply before the Ld. CIT(A) could not be submitted.
- vi. Moreover, its well settled position that Ld. CIT(A) can't dismiss appeal of the appellant, without discussing the facts on merits as available with the appellate authority."

5.1. The Sr. DR relied upon the orders of the authorities below.

6. During the hearing, the AR also filed an undertaking dated 26.04.2024 with respect to the address and the e-mail id, at which the communication could be sent by the NFAC as under:-

1. While hearing on 24-04-2024 the matter by Hon'ble Bench, where in was stated that, the appellant assessee company has to submit an undertaking with respect to the address and the email id, at which the communication can be sent by Ld CIT (A).

2. In confirmation to above, the assessee company hereby states the following Address for Communication Sanjeev Dhawan, 9/160, Kailash Nagar, Gandhi Nagar, Delhi - 110031. Email id for Communication sanjeev@bestpoly.in

3. Both of the above, ie address for communication and email has been updated on designated ITBA Portal also

4. Had there been any changes in future, the same will be updated on designated ITBA portal, within due course of time.”

7. We have heard rival submissions and perused the material available on record. Considering the fact that there was no effective representation on behalf of the assessee before the authorities below and the learned CIT(A) dismissed the assessee's appeal *in limine* without giving any finding on merit, in order to subserve the interests of natural justice and to provide an opportunity to the assessee to effectively represent his case, the order of learned CIT(A) is set aside and the matter is restored to the file of learned CIT(A) for decision afresh on merit, after providing reasonable opportunity of being heard to the assessee. Grounds are allowed for statistical purposes.

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

Order pronounced in the open court on 24th May, 2024.

Sd/-
[CHALLA NAGENDRA PRASAD]
JUDICIAL MEMBER

Sd/-
[BRAJESH KUMAR SINGH]
ACCOUNTANT MEMBER

Dated 24.05.2024.

SPK

Copy forwarded to:

1. Assessee
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi