

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'B' Bench, Hyderabad

Before Shri Laliet Kumar, Judicial Member
And
Shri Madhusudan Sawdia, Accountant Member

आ.अपी.सं / **ITA No.356/Hyd/2024**
(निर्धारण वर्ष/Assessment Year: 2018-19)

PMR Wardehousing Hyderabad PAN:AAUFP6369H (Appellant)	Vs.	Income Tax Officer Ward 11(1) Hyderabad (Respondent)
निर्धारिती द्वारा/Assessee by: Shri P. Vinod, Advocate		
राजस्व द्वारा/Revenue by: Smt. Sheetal Sarin DR		
सुनवाई की तारीख/Date of hearing: 06/06/2024		
घोषणा की तारीख/Pronouncement: 10/06/2024		

आदेश/ORDER

Per Laliet Kumar, J.M

This appeal filed by the assessee is directed against the order dated 06/03/2024 of the learned CIT (A)-NFAC Delhi, relating to A.Y.2018-19.

2. The grounds raised by the assessee read as under:

1. That on the facts and circumstances of the case, the Learned CIT(A),NFAC has erred in upholding the action of the Learned Assessing Officer in making an Addition of Rs.2,11,33,002/- under Section 68 of the Income tax Act, 1961.
2. That on the facts and circumstances of the case the Learned CIT(A),NFAC erred in not considering the pre-requisite for invoking the provisions of Section 68 is credit in the Books of Accounts of Assessee. No credit entry is found in the books of accounts of Appellant assessee hence the Addition U/s 68 of the act is not sustainable in the absence of credit entry in the books of Accounts.
3. That on the facts and circumstances of the case the Learned CIT(A),NFAC failed to understand that the Learned Assessing officer has made an Additions only based on amounts mentioned in Partnership deed which were adhoc and proposed amounts only.
4. In the facts and circumstances of the case the Learned CIT(Appeals), NFAC has failed to give the sufficient opportunity of being heard to the Appellant.
5. The appellant craves to alter, amend and modify any ground of appeal including the Additional evidence if though necessary.

3. Facts of the case, in brief, are that the assessee filed its return of income declaring total income at Rs.3,18,290/- for the impugned A.Y on 29.10.2018. The case was selected for compulsory scrutiny on the issue of specific information pointing tax evasion has been received from other agency and accordingly statutory notices u/s 143(2) and 142(1) of the I.T. Act, 1961 were issued and served on the assessee to which the AR of the assessee appeared before the Assessing Officer and furnished the requisite details.

4. Another notice u/s 142(1) was again issued to the assessee to prove the identity, creditworthiness and genuineness of the person introducing the share capital of Rs.3,35,80,515/- in the books of PMR Dwellings Pvt Ltd. The assessee submitted bank statement of PMR Dwellings Pvt Ltd, ledger of PMR Warehousing in the books of account of PMR Dwellings Pvt Ltd and ledger account of supplier in the books of PMR Dwellings Pvt. Ltd. As per clause 7 of partnership deed dated 27.7.2017, Rs.2.21 crore was agreed capital contribution of PMR Dwellings Pvt Ltd comprising of Rs.1.66 crore for Execution and Registration of lease deed, Rs.50 lakh towards refundable deposit to owner/lesser of land and Rs.5.00 lakh for developmental fees. The Assessing Officer observed from the ledger account submitted of PMR Warehousing and Bank statement, only amount of Rs.3,66,165/- was incurred for execution and registration of lease deed. Hence, the Assessing Officer treated the remaining amount of Rs.1,62,33,835/- as unexplained capital contribution u/s 68 since the assessee neither produced any bank entry in bank statement nor produced any other documentary evidence. Similar additions were also made by the Assessing Officer u/s 68 on verification of the ledger accounts of both the companies. Since sufficient opportunity of being heard has been provided to the assessee by issuing show cause notice on 19.4.2021 for the above additions in response to which the assessee submitted reply dated 23.4.2021 which is without any documentary evidence in support of the said unexplained capital contribution. Hence tax on the above

unexplained capital was calculated u/s 115BBE of the I.T. Act and penalty proceedings u/s 271AAC were also initiated.

5. Feeling aggrieved, the assessee preferred an appeal before the learned CIT (A) NFAC.

6. The learned CIT (A) NFAC also granted number of opportunities to the assessee to provide documentary evidence in support of assessee's claim. Since the assessee remained non-compliant, the learned CIT (A) NFAC dismissed the appeal filed by the assessee and upheld the additions so made by the Assessing Officer.

7. Feeling aggrieved, the assessee is in appeal before the Tribunal.

8. The learned Counsel for the assessee submitted that the learned CIT (A) NFAC erred in not considering the pre-requisite for invoking the provisions of section 68 and the Assessing Officer made addition only based on the amounts mentioned in Partnership deed which were ad hoc and proposed amounts only. Therefore, it is the submission of the learned Counsel for the assessee that given an opportunity, the assessee would be in a position to explain the issue with documentary evidence before the learned CIT (A) NFAC.

9. The learned DR, on the other hand, submitted that sufficient opportunities were granted by the Assessing Officer and the learned CIT (A) NFAC and the assessee remained non-compliant to produce the documentary evidence in support of its claim. Hence the grounds raised by the assessee should be dismissed and the orders of the Revenue should be upheld.

10. We have heard the rival arguments made by both the sides and perused the orders of the AO and the learned CIT (A). It is the submission of the learned Counsel for the assessee that the authorities below have not understood the issue properly and dismissed the appeal of the assessee and given an opportunity, the assessee would be in a position to explain its case with documentary evidence before the learned CIT (A) NFAC. Considering the totality of the facts of case and in the interest of natural justice, the appeal of the assessee is set aside to the file of the learned CIT (A) NFAC with a direction to grant one last opportunity to the assessee to explain the issue with documentary evidence before the learned CIT (A) NFAC. The assessee is also hereby directed to appear before the learned CIT (A) NFAC on the appointed date and time without seeking any adjournment under any pretext. Looking to the non-compliance of the assessee before the Revenue Authorities, we levy a charge of Rs.3000/- on the assessee and the assessee is directed to deposit the same with the Telangana State Legal Aid Services Authority in the Telangana

High Court and submit a copy of the slip to the Registry within one from the date of this order. We hold and direct accordingly.

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

Order pronounced in the Open Court on 10th June, 2024.

Sd/-

Sd/-

(MADHUSUDAN SAWDIA) ACCOUNTANT MEMBER	(LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 10th June, 2024

Vinodan/sps

Copy to:

S.No	Addresses
1	PMR Warehousing Survey No.650 & 651/A Shameerpet, Devarayamjal, Hyderabad 500078
2	Income Tax Officer Ward 11(1) Signature Towers, Kondapur, Hyderabad 500084
3	Pr. CIT - Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order