

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

BEFORE SHRI DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER
AND
SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.725/PUN/2024
निर्धारण वर्ष / Assessment Year : 2018-19

Skywards Developer, Office No.704, VB Capital, Range Hills Road, Opp. Symphony Restaurant Shivaji Nagar, Pune- 411007. PAN : ACAFS3003P	Kanakraj	Vs.	ITO, Ward-3(1), Pune.
Appellant			Respondent

Assessee by : Shri Pramod S. Shingte
Revenue by : Shri Sourabh Nayak

Date of hearing : 31.05.2024
Date of pronouncement : 11.06.2024

आदेश / ORDER

PER VINAY BHAMORE, JM:

This appeal filed by the assessee is directed against the order dated 15.03.2024 passed by Ld CIT(A)/NFAC for the assessment year 2018-19.

2. The appellant has raised the following grounds of appeal :-

"1. *On the facts and the circumstances of the case and in law, lower authorities erred in passing ex-parte order and erred in not deciding the issue on the merits of the case, this action is being violative of principal of natural justice. Your appellant prays for granting opportunity of hearing before lower authorities.*

Without prejudice to the above grounds of appeal, following grounds are also taken on merit:

- 2. On the facts and in the circumstances of the case and in law. The Learned Officer erred in passing order under section 143(3) by alleging that assessee has not made any compliance rather it is a submission of assessee that barring few notices during Pandemic period assessee has complied with all the notices and therefore, Learned Assessing Officer observation and his action based on such observation is bad in law therefore, order needs to be struck down.*
- 3. On the facts and in the circumstances of the case and in law. The Learned Officer erred in making an addition of Rs.4042559 being commission expenses by disregarding the actual submission made by assessee therefore, entire disallowance is incorrect and needs to be struck down.*
- 4. On the facts and in the circumstances of the case and in law. The Learned Officer erred in making an addition of Rs. 1602549 being Disallowance under section 43B by disregarding a factual submission made by assessee therefore, entire disallowance is incorrect and needs to be struck down.*
- 5. On the facts and circumstances of the case and in law Learned Assessing Officer erred in making an addition of Rs. 45350 being Interest on TDS by disregarding a factual submission made by assessee therefore, entire disallowance is incorrect and needs to be struck down.*
- 6. On the facts and circumstances of the case and in law Learned Assessing Officer erred in making an addition of Rs.2016900 being Addition under section 40a (ia) by disregarding a factual submission made by assessee therefore, entire disallowance is incorrect and needs to be struck down.*
- 7. On the facts and circumstances of the case and in law Learned Assessing Officer erred in making an addition of Rs.2059392 being disallowance out of expenses by disregarding a factual submission made by assessee therefore, entire disallowance is incorrect and needs to be struck down.*
- 8. On the facts and circumstances of the case and in law Learned Assessing Officer erred in rejecting the Project completion method followed by appellant constantly and further erred in substituting Percentage completion method and estimating net profit at 8 percent on adjusted WIP thereby, making an addition of Rs.9238697 your appellant prays for deletion of entire addition.*
- 9. On the facts and circumstances of the case and in law Learned Assessing Officer erred in making addition of Rs.6615108 being Unsecured Loan accepted from genuine parties without doing any verification and thereby charging the tax by applying rates*

under section 115BBE the entire action is arbitrary and therefore bad in law and same needs to be struck down.

10. *On the facts and circumstances of the case and in law Learned Assessing Officer erred in making addition of Rs. 1610000 being Share Capital introduced by partners without doing any verification and thereby charging the tax by applying rates under section 115BBE the entire action is arbitrary and therefore bad in law and same needs to be struck down.*

Your appellant craves for to add, alter, amend, modify, delete all above or any grounds of appeal before or during the course of hearing in the interest of natural justice.”

3. The facts, in brief, are that the assessee is a partnership firm engaged in the business of construction of building. The assessee filed its return of income for asstt year 2018-19 on 30.03.2019 declaring Rs.NIL income. The case was selected for scrutiny under CASS to check the issue of business expenses, the selection was done under E-assessment Scheme 2019. During the course of assessment proceedings, it transpires that mainly during the Covid-19 Pandemic Lockdown period, the appellant could not reply to couple of notices. However, the appellant has submitted detailed responses from March 2021 onwards. The Assessing Officer by disregarding various responses has completed the assessment by disallowing various items and further making certain addition on account of alleged unproved Unsecured Loan, unproved Share Capital Investments and also estimated the profit of the assessee

firm & completed the assessment by determining total income of the assessee firm at Rs1,74,63,810/-.

4. Being aggrieved with the above assessment order, an appeal was filed before Ld. CIT(A)/NFAC, who vide impugned order dated 15.03.2024 dismissed the appeal of the assessee for want of prosecution of the case.

5. Being aggrieved with the above *ex-parte* order passed by LD CIT(A)/NFAC, the appellant is in appeal before this Tribunal.

6. LD Counsel of the assessee submitted before us that LD CIT(A)/NFAC was not justified in passing *ex-parte* order. It was further submitted that total 3 notices were issued to the assessee & on the first two occasions adjournment was allowed to the assessee but on the last date of hearing i.e. on 08-03-2024 the prayer of adjournment was not allowed & appeal was dismissed without hearing to the assessee. It was also submitted that LD CIT(A)/NFAC was duty bound as per section 250(6) of the IT Act to decide each ground of appeal by a speaking order but LD CIT(A)/NFAC failed to decide each ground of appeal by a speaking order. The counsel of the assessee therefore requested before the bench to set-aside the order passed by LD CIT(A)/NFAC & further requested to provide one more opportunity to submit its claim before LD CIT(A)/NFAC in support of grounds of appeal.

7. LD DR supported the order passed by LD CIT(A)/NFAC.
8. We have heard LD counsels from both the sides & perused the material available on record. We find that the assessee sought adjournment on the last date of hearing but LD CIT(A)/NFAC denied the request of the assessee & proceeded to decide the appeal of the assessee in his absence. We also find that LD CIT(A)/NFAC has not decided each ground of appeal by a speaking order which is mandated by section 250(6) of the IT Act. In our considered opinion LD CIT(A)/NFAC erred in not adjourning the hearing of the appeal when a specific request was made by the assessee. We therefore without going into merits of the case set-a-side the *ex-parte* order passed by LD CIT(A)/NFAC & restore the matter back to the file of LD CIT(A)/NFAC to decide the appeal afresh after providing reasonable opportunity of hearing to the assessee. LD CIT(A)/NFAC shall decide the appeal as per facts & law after providing reasonable opportunity of being heard to the assessee. The assessee is also hereby directed to respond to the notice issued by Ld. CIT(A)/NFAC and submit the requisite details on the appointed date without seeking any adjournment under any pretext, failing which the CIT(A)/NFAC is at liberty to pass appropriate order as per law. We hold and direct accordingly. The first ground of appeal raised by the assessee is accordingly allowed.

9. In the result, the appeal of the assessee stands allowed for statistical purposes.

Order pronounced in the open Court on 11th day of June, 2024.

Sd/-
(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 11th June, 2024.

Sujeet

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "B" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.