

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

**BEFORE,  
SHRI S.RIFAUH RAHMAN, ACCOUNTANT MEMBER  
AND  
SHRI SUDHIR PAREEK, JUDICIAL MEMBER**

**ITA No.3262/Del/2023  
(ASSESSMENT YEAR 2016-17)**

Mark Electronics Corporation (Dissolved) Through erstwhile partner Ms. Manjula Bhargava U-1, 2 <sup>nd</sup> Floor, Green Park Extension New Delhi-110016 PAN:AAFFM 7682M <b>(Appellant)</b>	Vs.	Income Tax Officer Ward-29(1) Delhi          <b>(Respondent)</b>
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Assessee by	Sh. Priyanshu Goel, CA
Respondent by	Sh. Anshul, Sr. DR

Date of Hearing	03/06/2024
Date of Pronouncement	12/06/2024

**ORDER**

**PER S.RIFAUH RAHMAN, AM:**

1. This appeal has been filed by the Assessee against the order of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi ["Ld. CIT(A)", for short], dated 18/10/2023 for Assessment Year 2016-17.

**2.** At the time of hearing, the Ld. AR submitted that assessee is a sole proprietor concern. Originally the assessee company was formed as a partnership firm and the same was dissolved on 01/04/2008. Subsequently, the firm was functioning as a sole proprietor concern and it is declaring the result as such filing the return of income consistently over the years. In the current Assessment Year, the assessee has filed its return of income on 30/09/2016.

**3.** Subsequently, the Assessing Officer received information that erstwhile assessee i.e. partnership firm was importing goods with the IEC Code which was original registered in the name of erstwhile partnership firm. Accordingly, 148 notice was issued to the erstwhile company and asked to file the return of income. However, none represented the case before the AO, accordingly, the assessment was completed u/s 147 r.w.s. 144 of the Income Tax Act, 1961 ('the Act' for short).

4. Aggrieved, the assessee preferred an appeal before NFAC, Delhi

5. Before the Ld. CIT(A), the assessee has filed the appeal as well as filed additional evidences under Rule 46A, however, Ld. CIT(A) rejected the above additional evidences with the observation that the assessee has not filed the application for admission of additional evidences before him. Further, he rejected the submission that assessee has not received the notice due to the reasons that the same was served before old consultant. Hence, he dismissed the appeal in the name of the non existing concern. He submitted that assessment order in the name of the non existing concern is void *ab initio* in this regard. He relied on the following case laws:-

1. *Pr. Commissioner of Income Tax, New Delhi vs. Maruti Suzuki India Limited*, (2019) 416 ITR 613 (SC)
2. *Rajinder Nath Kapoor v. Income-tax Officer* {[2023] 153 taxmann.com 499 (Delhi)}, (2019) 416 ITR 613 (SC).
3. *Assistant Commissioner of Income-tax v. DLF Cyber City Developers Ltd* { [2015] 53 taxmann.com 81 (Delhi - Trib.)
4. *Delta Electronics India Pvt. Ltd. Vs PCIT* {[2023] 154 taxmann.com 603 (Uttarakhand)}
5. *Suman Jeet Agarwal vs. ITO* { [2022] 143 taxmann.com 11 (Delhi)

6. *Daujee Abhushan Bhandar (P.) Ltd. v. Union of India* [2022] 136 taxmann.com 246 (Allahabad)
7. *Twilight Infrastructure (P.) Ltd. v. Income-tax Officer* { [2024] 158 taxmann.com 378 (Delhi)}
8. *Ashok Kumar Makhija v. Union of India* { [2024] 162 taxmann.com 514 (Delhi)}
9. *Siemens Financial Services (P.) Ltd. v. Deputy Commissioner of Income-tax* { [2023] 154 taxmann.com 159 (Bombay)}
10. *FIVES India Engineering & Projects (P.) Ltd. v. Income-tax Officer* { [2024] 161 taxmann.com 79 (Madras)}

**6.** On the other hand, the Ld. DR relied on the orders of the lower authorities and submitted that there is no compliance before the Assessing Officer, therefore, Assessing Officer has not appreciated the relevant facts on record. Further, assessee filed the evidence without following proper due process.

**7.** Considered the rival submissions and material placed on record, we observed that the Assessing Officer has received certain information that the erstwhile partnership firm has imported goods and has not filed any return of income. Based on the information, the Assessing Officer issued 148 notice to the erstwhile partnership firm. Since, there was no compliance, the assessment order was completed u/s 147 r.w.s 144 of the Act. It is

brought to our notice that the assessee is a sole proprietor concern which imported the above said goods by wrongly using the IEC Code which was registered in the names of erstwhile partnership firm and Ld. AR prayed that the assessee failed to submit the new PAN to update the IEC Code. He submitted that all the imports are duly recorded in the assessee's books and relevant transactions were duly declared in the financial statement and also assessee is regularly filing return of income. After considering the detailed submissions of the assessee, we observed that the assessee has submitted the relevant information before the Ld. CIT(A) as additional evidences in order to appreciate the relevant facts on record, however, the Ld. CIT(A) has rejected the same on the reason that the assessee has not followed the due procedure. Since, the assessment order was passed on the erstwhile partnership firm which is not in existence is bad in law, therefore, the assessment order passed u/s 148 on the non existing person is set aside.

**8.** At the same time, in the interest of Revenue, we are of the view that since the assessee has submitted additional evidences before

Ld. CIT(A) to submit that the assessee has rightly disclosed all the imports by using the IEC Code of erstwhile partnership firm in the financial statements and declared the proper profit and loss account, also filed the relevant return of income, therefore, we deem it fit and proper to remit this issue back to the file of jurisdictional Assessing Officer with the limited purpose for verification of the various imports made by the assessee using IEC Code of erstwhile partnership firm. With the above direction, we direct the Assessing Officer to verify the same and complete the assessment as per law in the hands of the present assessee and not in the hands of erstwhile partnership firm, with the above direction the appeal filed by the assessee is allowed subject to verification of the above additional evidences.

**9.** In the result, appeal filed by the assessee is allowed.

Order pronounced on 12<sup>th</sup> June, 2024

Sd/-

**(SUDHIR PAREEK)**  
**JUDICIAL MEMBER**

Sd/-

**(S.RIFAUR RAHMAN)**  
**ACCOUNTANT MEMBER**

Dated: 12/06/2024

*Pk/sps*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT, NEW DELHI