

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH : BANGALORE**

BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

ITA No. 800/Bang/2024
Assessment year : 2016-17

Perfect Roofing, No.364, B.H. Road, Jajur, Arsikere, Hassan – 573 103. PAN : AARFP 4806G	Vs.	The Income Tax Officer, Ward-1 & TPS, Hassan.
APPELLANT		RESPONDENT

Appellant by	:	Ms. Lakshmi S., Advocate
Respondent by	:	Shri Subramanian S., Jt.CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	05.06.2024
Date of Pronouncement	:	19.06.2024

ORDER

Per Laxmi Prasad Sahu, Accountant Member

This appeal is filed by the assessee against the ex parte order dated 27.02.2024 of the CIT(Appeals), National Faceless Appeal Centre, Delhi [NFAC], for the AY 2017-18 dismissing the appeal of the assessee.

2. The assessee is a partnership firm engaged in the business of manufacturing and trading of roofing tiles. During the impugned year the assessee did not file return of income. It was noticed that during

the demonetisation period the assessee deposited cash of Rs.70,48,000 and notice u/s. 148 was issued on 11.03.2020. In response the assessee filed return of income on 15.09.2020. Subsequently various notices were issued and opportunities granted to the assessee. The assessee sought adjournment and time for furnishing details. From the part details furnished, it was noticed that on the date of formation of partnership firm on 06.07.2015, cash in hand on 06.07.2015 was Rs.36 lakhs and Rs.11.50 lakhs on 8.7.2015. The AO noted that assessee failed to furnish justification regarding source of opening cash in hand of partner, Sh. Gangadharswamy K.S. as on 01.04.20214 of Rs.15,57,477 and as on 01.04.2015 of Rs.34,72,477 which the partner pretends that it was accumulated since 2013 onwards in spite of heavy interest expenditure. The AO was not satisfied from the submissions of assessee and made addition u/s. 68 of Rs.55,50,000. It was also noted that assessee had income which should have been computed u/s. 44AD on the other turnover of Rs.90,16,217. There was another addition of Rs.20,000 for not complying TDS provisions u/s. 194C which is 30% of Rs.69,656. Accordingly total income was assessed at Rs.63,27,377 in the assessment u/s. 147 r.w.s. 144(b) of the Act.

3. On appeal, the CIT(Appeals) issued two notices on 05.02.2024 and 19.02.2024 fixing hearing on 20.02.24 and 26.02.2024 and ex parte order was passed on 27.02.2024 dismissing the appeal for non-prosecution after relying on various judgments on the basis of material available on record on merits. Aggrieved, the assessee is in appeal before ITAT.

4. The Id. AR submitted that during peak COVID period notice u/s. 148 was issued and reassessment was completed on 29.09.2021, therefore assessee could not respond properly during reassessment proceedings. Thereafter assessee filed appeal before the First Appellate Authority (FAA) on 15.10.2021 and after lapse of more than 2 years, the FAA issued notices only on two occasions which is clear from para 5 of the Id. FAA's order and sufficient opportunities were not granted to assessee. Even the second notice was issued on 26.02.2024 and immediately on the next day the Id. FAA passed the ex parte appellate order. Accordingly, she requested that if a chance is given to the assessee, she undertook to respond to the notices and substantiate the case of the assessee with evidence before the lower authorities.

5. The Id. DR relied on the order of lower authorities and objected to sending back the matter to lower authorities.

6. Considering the rival submissions, we note that assessment was completed u/s. 147/144 r.w.s. 144(b) of the Act. The assessee is a new partnership firm formed on 06.07.2015 and on the same day huge amount of cash was contributed by the partner. The AO made addition u/s. 68 for want of proper explanation and also made other additions for not offering income u/s. 44AD and for violation of provisions of section 194C of the Act. The CIT(Appeals) decided the issue ex parte

after issuing two notices within a month and immediately passed order on 27.02.2024. The ld. AR submitted that notices were not received by the assessee. Considering the prayer of the assessee and in the interest of justice, we remit the issue to the AO for fresh consideration and decision as per law. The assessee is directed to file necessary documents that would be essential and required for substantiating its case and for proper adjudication by the revenue authorities. Needless to say that reasonable opportunity of being heard be given to the assessee. The assessee is directed to cooperate with the proceedings and in case of further default, the assessee shall not be entitled to any leniency.

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

Pronounced in the open court on this 19th day of June, 2024.

Sd/-
(BEENA PILLAI)
JUDICIAL MEMBER

Sd/-
(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 19th June, 2024.

/Desai S Murthy /

Copy to:

1. Appellant
2. Respondent
3. Pr.CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.