

IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH KOLKATA

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER
AND SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**ITA No.56/KOL/2024
Assessment Year: 2012-13**

Natkhat Agro Foods Pvt. Ltd. 71, Canning Street, Block-A, Room 402/5, Kolkata-700001. (PAN: AADCN7720J)	Vs	Income Tax Officer, Ward- 6(3), Kolkata
(Appellant)		(Respondent)

Present for:

Appellant by : N o n e

Respondent by : Shri Sailen Samadder, Addl. CIT, Sr. DR

Date of Hearing : 06.06.2024

Date of Pronouncement : 21.06.2024

ORDER

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi (hereinafter referred to as “the Ld. CIT(A)” passed u/s. 250 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) for AY 2014-15 dated 16.11.2023 passed against the assessment order u/s. 147/144 of the Income-tax Act, 1961 (hereinafter referred to as the “Act”) by ITO, Ward-6(3), Kolkata dated 13.12.2019.

2. Neither any one appeared on behalf of the assessee nor filed any adjournment application at the time of hearing. Shri Sailen Samadder, Addl. CIT, Sr. DR appeared on behalf of the revenue and after hearing the Ld. CIT, DR, we adjudicate and dispose of the appeal.

3. The assessee has raised the following grounds of appeal:

“1. For that the Ld. CIT(A), NFAC, Delhi has erred in law as well as on facts of the case by passing order u/s 250 of the I.T. Act, 1961 dated 16/11/2023 dismissing the appeal filed by the appellant and thereby confirming the addition of Rs.15,00,056/- by the Assessing Officer u/s 68 of the Income Tax Act, 1961 on the plea of non-compliance of fixation notice which is incorrect, baseless & false. Also the order passed by the Ld. CIT(A) dated 16/11/2023 is based on so many misleading factors.

2. For that the Ld. CIT(A), NF AC, Delhi has erred in law as well as on facts of the case by passing order u/s 250 of the LT. Act, 1961 on 16/11/2023 at 13:06:32 hours while adjournment for compliance of fixation notice was allowed upto 16/11/2023 and thereby Ld. CIT(A) has deliberately misused his power without objective and lawful application of mind and by ignoring natural justice to your appellant. Also this is a glaring example of whimsicality by the Ld. CIT(A), NF AC, Delhi. Your valuable and lawful verdict only can give justice to your appellant. Photocopy of adjournment letter alongwith Statement of Facts which was ready for submission before Ld. CIT(A) on 16/11/2023 itself is enclosed herewith for your kind perusal and record.

3. For that the Ld. CIT(A), NFAC, Delhi has erred in law as well as on facts of the case by dismissing the appeal filed by your appellant on the plea of non-compliance of 4 notices on different dates as no such notices were received by your appellant apart from notices for which adjournment was sought for. Also adjournment was allowed by the Ld. CIT(A), NFAC, twice-once for 7 days and then for 5 days during festive period which shows pre-conceived mind set of Ld. CIT(A) for dismissing the appeal filed by your appellant ignoring the rules of natural justice.

4. For that the Ld. CIT(A), NFAC, has erred in law as well as on facts of the case by dismissing the appeal of such a company which was non-existence at the time of passing the order as the company was struck off from the list of Registrar of Companies by the Govt. of India w.e.f. 01/04/2018.

5. For that the observations and contentions of the Ld. CIT(A) in dismissing the appeal filed by your appellant on the grounds which are not correct.

6. For that the appellant craves leave to adduce, modify and/or alter the grounds at or before hearing.”

4. Ground Nos. 5 and 6 are general in nature and do not require any specific adjudication.

5. Ground Nos. 1 to 3 relate to confirming the addition of Rs.15,00,056/- by the Assessing Officer u/s 68 of the Act, while ground no. 4 relates to dismissing the appeal of a non-existing company at the time of passing of the order as the company was struck off from the list of Registrar of Companies w.e.f. 01.04.2018.

5.1. Briefly stated facts as culled out from records are that the assessee, a private limited company filed its return of income on

30.09.2012 declaring a total loss of Rs.46,892/-. Subsequently, on receipt of information from Investigation Wing with respect to the assessee's receipt of Rs.15,00,056/- from one M/s. Veshnawy Vyapaar Pvt. Ltd. during the assessment year in question, the case was reopened and statutory notices were issued from time to time. Since there was no response from the assessee during the assessment proceedings, the AO proceeded to complete the assessment ex parte and passed the assessment order by holding that the credit of Rs.15,00,056/- in the book of accounts of the assessee stood unexplained and it was added to the total income of the assessee. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A), who confirmed the action of the AO by respectfully following the ratio of decisions relied upon in his order at paras 18 and 19 and also the facts and circumstances of the case. As no documentary evidence whatsoever, satisfying the three conditions relevant to section 68 was filed, he held that the order of the AO does not suffer from any infirmity or perversity and therefore, the same did not call for any interference and the Ld. CIT(A) confirmed the addition as made by the Ld. AO. Aggrieved, the assessee is now in appeal before the Tribunal.

5.2 We have heard the Ld. CIT, DR and have carefully gone through the material available on record. A perusal of the order of the Ld. CIT(A) shows that there was no response to various notices issued to the e-mail sushilkumarpurohit@rediffmail.com while on the last date, an adjournment was sought. The Ld. CIT(A) relying upon the ratio of the decisions in the case of Susham Singla Vs. ACIT 33 ITR (T) 449 (Chandigarh Tribunal) and Ashokji Chanduji Thakur Vs. PCIT reported in 130 taxmann.com 131 (SC) and observing that the assessee was not willing to pursue the case and as per the legal maxim, the law aids those who are vigilant, not those who sleep upon their rights, in the

subsequent paragraphs, the Ld. CIT(A) has given the background of the case and has also decided the issue on merits.

5.3. We note that on 23.04.2024, the assessee had filed a paper book along with written submission. A perusal of the order of the Ld. AO shows that a notice u/s. 148 of the Act was issued but the assessee did not file any return of income. This notice was issued on the basis of information received from the Dy. Director of Investigation, Unit-1(3), Kolkata. As per the assessment order, the reasons were also recorded before issuing the notice. Since the assessee failed to file any explanation, therefore, a sum of Rs.15,00,056/- was added as unexplained cash credit. The reasons for the addition are mentioned in para 3 of the assessment order. Apparently, the addition was made on account of non-representation before the Ld. AO which has been confirmed by the Ld. CIT(A) again on account of non-prosecution of the appeal. Hence, in order to be fair to both the assessee and the Ld. AO, the order of the Ld. CIT(A) is set aside and the Ld. AO is directed to pass an order afresh after granting a reasonable opportunity of being heard to the assessee. The assessee is also directed not to seek unnecessary adjournment.

6. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 21st June, 2024.

Sd/-
(Sanjay Garg)
Judicial Member

Sd/-
(Rakesh Mishra)
Accountant Member

Dated: 21st June, 2024

JD, Sr. P.S.

Copy to:

1. The Appellant:
 2. The Respondent.
 3. CIT(A), NFAC, Delhi
 4. The CIT,
 5. DR, ITAT, Kolkata Bench, Kolkata
- //True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata