

IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH KOLKATA

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

**ITA No.931/KOL/2023
Assessment Year: 2014-15**

Ganan Mercantile Private Limited (now known as Samson Angel Investments Pvt. Ltd.) No. 191, Demellows Road, Samson Tower (Diagonally Opp. Natraj Theatre), Choolai Chennai, Tamilnadu-600112. (PAN: AABCG7600E)	Vs	Income Tax Officer, Ward-8(2), Kolkata
(Appellant)		(Respondent)

Present for:

Appellant by : Shri Miraj D. Shah, AR
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 23.08.2023 against the assessment order u/s. 144 of the Income-tax Act, 1961 (hereinafter referred to as the “Act”) by ITO, Ward-6(2), Kolkata dated 30.11.2016.

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

“1 That the order passed u/s 250 is bad in law as well as on facts of the case.

2. That the Hon'ble Commissioner of Income Tax (A) - NFAC erred in law as well as on facts of the case by not considering the fact that the Ld. Assessing Officer failed to provide information/material/statement which was collected at the back of the appellant, thus making the assessment bad in law.

3. That the Hon'ble Commissioner of Income Tax (A) - NFAC erred in law as well as on facts of the case by confirming the addition made by the Learned Assessing Officer by making addition of capital loss of Rs.26,02,961/- booked from the investment made in the script of M/s Unno Industries Ltd & M/s Ashika Credit Capital Ltd by treating the same as bogus and not genuine.

4. That the Hon'ble Commissioner of Income Tax (A) - NFAC erred in law as well as on facts of the case by confirming the addition made by the Learned Assessing Officer by making addition of Rs.17,53,991/- by stating that donation of Rs.10,00,000/- and deduction u/s 35AC of Rs.7,53,991/- was claimed by the assessee even though no such claim has been made in the return of income.

5. That the appellant craves to leave, add, amend or adduce any of the grounds of appeal during the course of appellate proceedings.”

3. Ground Nos. 1, 2 and 5 are general in nature and do not require any separate adjudication.

4. Ground Nos. 3 and 4 relate to the confirmation of addition made by the Ld. AO on account of capital loss and donation and deduction claimed u/s. 35AC of the Act. The Ld. CIT(A) has reproduced the extract of the order of the Ld. AO as under:

“The assessee did not comply on the fixed date. Thereafter notice u/s 142(1) of the I.T. Act, 1961 along with questionnaire was issued on 18.08.2016 fixing the case for hearing on 05.09.2016, No response has been received from the assessee. Again Notice u/s 142(1) of the I.T. Act, 1961 along with questionnaire was issued to the assessee through E-mail fixing the case for hearing on 10.11.2016. Again, there was no compliance from the end of the assessee.

As the case was going to be barred by the limitation on 31.12.2016, a final show cause notice was issued to the assessee company on 18.11.2016 requesting to show cause as to why the order should not be passed u/s 144 of the I.T. Act, 1961 as per merit of the case as "Ex parte" assessment. The case was fixed for hearing on 25.11.2016. But there was no compliance on the part of the assessee to the show cause notice even.”

4.1. Thereafter, vide para 5.1 he has discussed the reason for making the addition on account of no explanation submitted by the assessee to controvert the finding of the Ld. AO and para 6 has given a finding as under and dismissed the appeal of the assessee:

“It is clear from the discussion in para nos. 4 & 5 above that the appellant is not desirous of pursuing the grounds of appeal though more than adequate

opportunities were provided. Since the appellant failed to controvert the AO's findings in making addition of Rs.26,02,961/- by disallowing the bogus loss claimed on share transactions and disallowance of Rs. 17,53,991/- being the donation made and deduction claimed u/s 35AC of the Act, therefore, I have no other alternative but to uphold the addition and dismiss the appeal following the ratio of the decision of the Hon'ble ITAT, Delhi Bench in the case of CIT Vs. Multiplan India Limited reported in 38 ITR 320 and also the decision of the Hon'ble MP High Court in the case of Estate of Late Tukhoji Rao Holkar Vs. CWT reported in 233 ITR 480. The law assists only those who are vigilant with their rights and not those who sleep over their rights. Following this principle as embodied in the well known dictum "vigilantibus non dormientibus, jura subveniunt", the grounds raised in this appeal as reproduced in para 2 supra are dismissed."

5. We have heard rival submissions and carefully perused the material available on record. It was submitted in the course of the appeal before us that the order of the Ld. AO as well as the Ld. CIT(A) are ex parte and the loss of Rs. 26,00,000/- and deduction u/s. 35AC of Rs. 10,00,000/- which were disallowed/added by the Ld. AO have been confirmed by the Ld. CIT(A). The reason for non-compliance is stated to be the incorrect communication address as the e-mail ID mentioned in Form No. 35 filed before the Ld. CIT(A) was different from the e-mail ID available in I. T. Portal and the Ld. AR requested that an opportunity may be allowed to the assessee to make submission before the Ld. AO.

6. Ld. DR, on the other hand, relied on the order of the Ld. CIT(A).

7. After perusing the order of the Ld. CIT(A), we note that the Ld. CIT(A) confirmed the order of the Ld. AO as the appeal filed before the Ld. CIT(A) was not pursued despite adequate opportunities provided and, therefore, he had no other alternative but to uphold the addition and dismiss the appeal following the ratio of the decision of ITAT, Delhi Bench in the case of CIT Vs. Multiplan India Limited reported in 38 ITD 320 and also the decision of the Hon'ble M. P. High Court in the case of Estate of Late Tukhoji Rao Holdar Vs. CWT reported in 233 ITR 480. The assessee has given justification for non-compliance by stating that the e-mail for communication was mentioned in Form No. 35 while the notices were issued on the e-mail available in the PAN data base. E-

mail address as mentioned in Form No. 35 is caakjain@gmail.com whereas as per the assessee, the e-mail address mentioned in the PAN data base was accounts@samsonlighting.com and affidavit of Shri Rajiv B Sampat one of the directors of M/s. Ganan Mercantile Pvt. Ltd. now known as Samson Angel Investments Pvt. Ltd. has also been filed which is reproduced as under:

"I RAJIV B SAMPAT, Son of Mr. B.J.Sampat, having PAN no AAEP5899Q do hereby solemnly declare and affirm as follows:

- 1. That I am one of the directors of M/s Ganan Mercantile Pvt Ltd now known as Samson Angel Investments Pvt Ltd.*
- 2. That there was non-compliance in responding to the communications related to the Scrutiny proceeding under section 143(3) of the Income Tax Act, 1961, due to incorrect communication address on record. i.e., 71, 5th Floor, Canning Street, Kolkata-700001 (West Bengal).*
- 3. That the communication sent by the department is 71, 5th Floor, Canning Street, Kolkata-700001 (West Bengal), which is different from the correct communication address at that time i.e., 214/216, Jamunalal Bajaj Street, Burabazar, Kolkata-700001.*
- 4. That due to this incorrect communication address, we did not receive the notices for the aforesaid assessment proceeding for the Assessment Year 2014-2015.*
- 5. That I, hereby affirm that the non-compliance on my part was unintentional, and I had no knowledge of the incorrect address maintained by the department.*
- 6. That the aforesaid assessment proceeding come to my knowledge when demand was updated in the Income Tax Online Portal.*
- 7. That I like to inform the department that my current address is No.191, Demellows Road, Samson Tower (Diagonally Opp. Natraj Theatre) Choolai Chennai, Tamil Nadu- 600112.*
- 8. That there was also non-compliance in responding to the communications related to the Appellate proceeding under section 250 of the Income Tax Act, 1961, for the Assessment Year 2014-2015 as all notices were sent to the incorrect e-mail Id i.e., accounts@samsonlighting.com. The assessee has given a different email Id in Form 35 i.e. caakjain@gmail.com and no notices related to appellate proceeding were communicated in the email id mentioned in the Form 35.*
- 9. That the non-compliance was not due to any mala fide intention but due to the above stated reasons.*
- 10. That whatever is declared herein above is true to the best of my knowledge and belief."*

8. Hence, in order to be fair to both the assessee and the Ld. AO, the order of the Ld. CIT(A) is set aside to the Ld. AO and he is directed to afford a reasonable opportunity of being heard to the assessee, ensure that communication is sent at the correct address/e-mail ID and make the assessment order de novo. The assessee is directed not to seek any unnecessary adjournment and to furnish the required evidence before the Ld. AO as and when called for.

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

Order pronounced in the open court on 2st 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