

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G", MUMBAI

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER

ITA 189/Mum/2024
(Assessment year : 2011-12)

Shrinathji Shares Trading Pvt Limited, 701, Sargam Building, Opp Poisar Gymkhana, Sababa Extn Road, Kandivali West, Mumbai- 400 067 PAN : AALCS3951Q	vs	National Faceless Appeal Centre (NFAC), Delhi
APPELLANT		RESPONDENT

Assessee by : Shri Vimal Punmiya,CA
Respondent by : Shri Dinesh Chourasia – Sr. AR

Date of hearing : 30/05/2024
Date of pronouncement : 05/ 06/2024

ORDER

PER ANIKESH BANERJEE, J.M:

Instant appeal of the assessee is preferred against the order of the National Faceless Appeal Centre, Delhi [for brevity, 'Ld.CIT(A)'] passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), for Assessment Year 2011-12, date of order 02.11.2023. The impugned order was emanated from the order of the Id. Income-tax Officer, Ward 13(2)(3), Mumbai (in short, 'the Id. A.O.') passed under section 144 read with section 147 of the Act date of order dated 08/11/2019.

2. The assessee has taken the following grounds of appeal:-

- “1. The Ld.CIT(A) erred in determining the total income of the Appellant at Rs.4,57,91,740/- as against the returned income of Rs.Nil.
2. The Ld.CIT(A) erred in making an addition of Rs. 3.14,67,232/- as unexplained cash credit u/s 68 of the Act.
3. The Ld.CIT(A) failed to appreciate that the addition is made arbitrarily, without application of mind and hence illegal and invalid.”

3. The brief facts of the case is that the assessee's case was reopened under section 148 of the Act and order was passed under section 144/147 of the Act, with an addition of Rs.3,14,67,232/- under section 68 for unexplained cash credit and Rs.1,43,24,500/- as unexplained cash deposit. The total income was determined amount to Rs.4,57,91,740/- against the returned income of the assessee at Nil. Being aggrieved, the assessee filed an appeal before the Id. CIT(A). The Ld.CIT(A) passed an ex parte order without considering the merit of the case and upheld the assessment order. Being aggrieved, the assessee filed an appeal before us.

4. We heard the rival submission and considered the documents available in the record. The Ld.AR placed that the assessee was suffering from mental as well as physical problem and was undergoing medications. Due to the reasons, the assessee missed the notices issued by the Ld.CIT(A). The Ld.AR further argued that the Ld.CIT(A) passed the ex parte order without considering the merits of the case. The relevant paragraphs of the appeal order at paras 5.4 to 5.7 are as under:-

“5.4 The Delhi Tribunal in CIT Vs. Multiplan India Pvt. Ltd. as reported in 38 ITD 320 (Delhi) when faced with a similar situation of non-prosecution of appeal, dismissed the appeal of revenue.

5.5 In view of these facts, I have considered the facts of the case of the appellant. –It is observed that the appellant has not filed any submissions/documentary evidence"during the course of appellate proceedings in spite of various opportunities given by this office. In the absence of any submissions/evidencesfiled by the appellant the adjudication is done on the basis of material on record.

5.6 Since the assessee has not filed any documentary evidence in support of his claim in statement of facts and grounds of appeal, therefore, the claim of the appellant cannot be considered in absence of any supporting document. Further, it is observed that the appellant has been non-compliant during the assessment proceedings also. Hence considering all the facts and circumstances of the case, there is no material on record to warrant interference in the order of the Assessing Officer.

5.7 In view of the fact that there is no material on record to warrant interference in the order of Assessing Officer, the Grounds of Appeal are hereby dismissed.”

5. The Ld.DR argued and did not make any strong objection against the submission of the assessee. We find that the appeal order was passed *exparte* and without considering the merit of the case. The assessment order was also passed *exparte* under section 144 / 147 of the Act. The reasonable opportunity for the assessee is denied, both in the appeal and in the assessment proceedings. The assessee has reasonable cause for non-compliance in appeal proceeding. Accordingly, we remit back the matter to the file of the Ld.CIT(A) for adjudication

de novo in set aside proceedings. Here, we are not expressing any views on the merits of the case so as to limit the appeal proceedings before the Ld.CIT(A). Needless to say, the assessee should get a reasonable opportunity of hearing in set aside proceedings. The assessee should be diligent in appeal proceedings for expeditious disposal of appeal.

6. In the result, appeal in **ITA 189/Mum/2024** is allowed for statistical purpose.

Order pronounced in the open court on 05th day of June, 2024.

Sd/-

(B.R. BASKARAN)
ACCOUNTANT MEMBER
Mumbai, दिनांक/Dated: 05/06/2024
Pavanan

sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
5. गार्डफाइल/Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar), **ITAT, Mumbai**