

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

BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER

ITA 973/Mum/2024
(Assessment year: 2017-18)

Peel Works Private Limited 1 st and 2 nd Floor, Kaglawala House, Plot No.175, Behind Shaman Wheels (Mercedes Showroom), CST Road, Kalina, Bandra Kurla Complex, Santacruz East, Mumbai-400 098 PAN : AAFCP6513K	vs	Assistant Commissioner of Income Tax-7(3)(2), Mumbai, 128A, 1 st Floor, Aayakar Bhavan, M.K. Road, Mumbai-400 020
APPELLANT		RESPONDENT

Assessee by : Shri Dhaval Shah
Respondent by : Shri H.M. Bhatt (SR DR)

Date of hearing : 06/06/2024
Date of pronouncement : 07/06/2024

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 2017-18, date of order 03.01.2024. The impugned order emanated from the order of the Id.

ACIT, Circle 7(3)(2), Mumbai (in short, 'the Id. A.O.')

passed under section 143(3) of the Act, order dated 21/12/2019.

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

"Grounds of appeal against the order of National Faceless Appeal Centre passed on 03.01.2024. u/s. 250 of the Act.

Following grounds of appeal are without prejudice to each other:

1. *The Ld. CIT(A) has erred in law and in facts in passing the order u/s. 250 of the Act dismissing the appeal of the appellant and confirming the assessment order u/s 143(3) of the Act which is bad and invalid in the eyes of law.*
2. *The Ld. CIT(A) has erred in law and in facts in passing the order in gross violation of principles of natural justice.*
3. *The Ld. CIT(A) has erred in law and in facts in not appreciating that the assessment order passed u/s 143(3) of the Act is without DIN and therefore invalid and bad in the eyes of law.*
4. *The Ld. CIT(A) has erred in law and in facts in confirming the action of AO in disallowing claim of depreciation of Rs. 59,6s,267/- which is bad and invalid.*
5. *The Ld. CIT(A) has erred in law and in facts in confirming the action of AO in disallowing of expenditure of Rs. 242S&7/- u/s 4o(a)(i) of the Act which is bad and invalid.*

6. *The Ld. CIT(A) has erred in law and in facts in confirming the action of AO in initiating penalty proceedings u/s 270A of the Act.*
7. *The appellant craves leave to add to, alter, amend and / or delete in all the foregoing grounds of appeal.”*

3. Brief fact of the case is that assessee's case was assessed under section 143(3) of the Act. During the assessment, the addition was made in different heads, broadly, the depreciation, expenditure by contravening section 40(a)(ia), disallowance of TDS credit. The total addition was made at Rs.1,01,84,920/-. Aggrieved assessee, filed an appeal before the Ld.CIT(A). The Ld.CIT(A) partly allowed the relief claimed by the assessee, but in case of depreciation amount to Rs.59,65,267/- and addition for contravening section 40(a)(ia) amount to Rs.2,42,367/- are upheld. Being aggrieved by the appellate order, the assessee filed an appeal before us.

4. The Ld.AR appeared and argued that the appeal order was passed exparte and the assessee has not allowed the reasonable opportunity before the Ld.CIT(A). The prayer of Ld.AR before the Bench is that to set aside the matter to the file of Ld.CIT(A) for fresh adjudication on the additions confirmed by the Ld.CIT(A).

5. The Ld.DR vehemently argued and relied on the orders of the revenue authorities.

6. We heard the rival submission and considered the documents available in the record. The Ld.AR explained that the assessee had not received the notices in portal, so was unable to comply before the CIT(A). The Ld.CIT(A) allowed the part relief but only amount of Rs.2,42,367/- for contravening section 40(a)(ia) and

amount to Rs.59,65,567/- disallowing the claim of depreciation. The Ld.AR in submission placed that due to unexplained fact, the appeal order was passed, and the assessee was not able to get the reasonable opportunity before the CIT(A) which violates the natural justice.

7. The Ld. DR has not made any strong objection against the submission of the assessee but invited our attention to CIT(A)'s order, page 7. The relevant paragraph is reproduced below:-

“5. It was noticed that apart from filing Grounds of Appeal & Statement of Facts, no other detail was provided by the appellant to drive home its contention. Therefore, notices dated 19.02.2020, 14.01.2021, 21.09.2022, 04.11.2022 etc. were issued. The appellant kept on seeking adjournments.

5.1. It was noticed that the major addition made on account of disallowance of depreciation was a repetitive issue. Therefore, there was no rhyme or reason for seeking adjournments. However, a final show cause notice dated 21.07.2023 was issued in the following manner:

Notices dated 19.02.2020, 14.01.2021, 21.09.2022 and 04.11.2022 have been issued to you without any avail, therefore, this final show cause is being issued to you and requested to submit all relevant details within 10 days of receipt of this notice, failing which your Appeal will be decided ex-parte on merits without further reference.

5.2. As usual, a letter dated 29.07.2023 was submitted by the appellant seeking 15 days adjournment. However, till date no communication has been received from its end. It is trite that the law assists the vigilant and not the indolent, as stated in the Latin Maxim "Vigilantibus non dormientibus jura subveniunt". Clearly, appellant is not interested in submitting requisite details to contest the appeal. Accordingly, the Ground of Appeal are being decided on the basis of available documents.”

In our considered view, the assessee has a reasonable cause for nonappearance before the Id. CIT(A) as explained by the Ld.AR. In the appeal, the grounds are allowed partly, so rest of the grounds which has grievance for the assessee is

directed to be considered before the Id. CIT(A). The matter is remitted back to the file of Ld. CIT(A). We are not expressing any view about the merit of the case, which will impart the proceedings before the Id. CIT(A). Accordingly, the grounds of appeal of the assessee are remitted back to CIT(A) for further adjudication.

7. In the result, appeal in **ITA 973/Mum/2024** is allowed for statistical purpose.

Order pronounced in the open court on 07th day of June, 2024.

Sd/-

(GAGAN GOYAL)
ACCOUNTANT MEMBER
Mumbai, दिनांक/Dated: 07/06/2024
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.

BY ORDER,

//True Copy//

(Asstt. Registrar), ITAT, Mumbai