

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, MUMBAI**

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER &
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER,**

**ITA No.504/Mum/2024
(A.Y. 2017-18)**

My Own Eco-Energy Private Limited, A1, Office No. 444, 4 th Floor, Shah & Nahar Industrial Estate, Sitaram Jadhav Marg, Lower Parel West, Maharashtra 400013	Vs.	ACIT, 7(2)(2) 623, 6 th Floor, Aayakar Bhavan, M.K. Road, Maharashtra - 400020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAHCM8412E		
Appellant	..	Respondent

Appellant by :	Dhaval Shah
Respondent by :	Ms. Madhu Malati Ghosh

Date of Hearing	29.05.2024
Date of Pronouncement	21.06.2024

आदेश / O R D E R

Per Amarjit Singh (AM):

The present appeal filed by the assessee is directed against the order of Id. CIT(NFAC) of the Income Tax Act, 1961 for A.Y. 2017-18. The assessee has raised the following grounds before us:

- “1. The Ld. CTT(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 144 of the Act which is bad and invalid in the eyes of law.*
- 2. The Ld. CII(A) has erred in law and in facts in passing the order u/s 250 of the Act in limine without condoning the delay in filing appeal by the appellant which is bad and invalid in the eyes of law.*

3. *The Ld. CIT(A) has erred in law and in facts in not admitting additional evidences filed by the appellant during the course of appellate proceedings which is bad and invalid in the eyes of law.*
4. *The Ld CIT(A) has erred in law and in facts in passing the order in gross violation of principles of natural justice.*
5. *The Ld. CIT(A) has erred in law and in facts in upholding the assessment order passed by AO u/s 144 of the Act on best judgment basis.*
6. *The Ld. CIT(A) has erred in law and in facts in not appreciating that the notice issued u/s 143(2) of the Act is beyond time limit and hence invalid in the eyes of law leading to entire reassessment proceedings being void ab initio.*
7. *The Ld. CIT(A) has erred in law and in facts in not appreciating that the assessment order passed u/s 144 of the Act is without DIN and therefore invalid and bad in the eyes of law.*
8. *The Ld. CIT(A) has erred in law and in facts in confirming the action of AO in making addition of Rs. 24,63,29,761/- as unexplained cash credit u/s 68 of the Act.*
9. *The Ld. CIT(A) has erred in law and in facts in confirming the action of AO in invoking provisions of s. 115BBE of the Act.*
10. *The Ld. CIT(A) has erred in law and in facts in confirming the action of AO in charging interest u/s 234B of the Act.*
11. *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.*

The appellant craves leave to add to, alter, amend and / or delete in all the foregoing grounds of appeal.”

2. Fact in brief is that return of income declaring total income at Rs.nil was filed on 30.10.2017. The case was subject to scrutiny assessment and notice u/s 143(2) of the Act was issued on 22.09.2019. During the course of assessment the assessee has not made any compliance, therefore, AO has completed the assessment ex-parte u/s 144 of the Act. During course of assessment the AO noticed that during the year under consideration the assessee has received loan of Rs.24,63,29,761/- and genuineness, creditworthiness and identities of the parties from whom loan were taken was not proved since assessee has not made compliance, therefore, the whole amount of

Rs.24,63,29,761/- was added to the total income of the assessee as unexplained cash credit u/s 68 of the Act.

3. The assessee filed the appeal before the ld. CIT(A). Before the ld. CIT(A) there was 40 days delay in filing the appeal. The assessee has applied for condonation of delay on the ground that one of the director of the assessee company was sick for 50 days from 01.01.2020 to 20.02.2020, therefore requested for condonation of delay in filing the appeal by 42 days. The ld. CIT(A) has not condoned the delay and sustained the addition of Rs.24,63,29,760/- made by the assessing officer as per ex-parte order passed u/s 144 of the Act on 12.12.2019.

4. During the course of appellate proceedings the ld. Counsel submitted that assessee has specifically requested the ld. CIT(A) to condone the 42 days but without considering the submission of the assessee properly the appeal of the assessee was dismissed. The ld. Counsel also submitted that AO has erroneously added the whole amount of loan of Rs.24,63,29,761/- received by the assessee as security deposit from the customers and dealers of the assessee company. The ld. counsel also referred the statement of facts filed by the assessee before the ld. CIT(A) that assessee could not make compliance before the assessing officer on the ground that all the notices received on e-mail id of ex-director of the company Mr. Jayant Jagannath remain unattended due to his ill-health. The ld. Counsel submitted that assessee could not make compliance to the notices as he was not aware about such notices issued during the course of assessment. The ld. Counsel also submitted that assessee was having sufficient proof and evidence to prove creditworthiness, identity and genuineness of the amount which was disallowed on an ex-parte basis by the assessing officer and same was not adjudicated by the ld. CIT(A) on merit.

5. On the other hand, ld. D.R supported the order of lower authorities.

6. Heard both the sides and perused the material on record. The assessee has not made compliance before the assessing officer, therefore, assessing officer has passed ex-parte order u/s 144 of the Act Rs.24,63,29,761/- treating the loan amount of Rs.24,63,29,761/- as unexplained cash credit u/s 68 of the Act. In the form no. 35 of the appeal filed before the ld. CIT(A) the assessee has requested for the condonation of delay in filing the appeal happened because of sickness of the director of the company Mr. Santosh Verma who was handling income tax matter of the assessee company. The assessee has also explained in the statement of facts filed before the ld. CIT(A) that the notices received on the e-mail id of the ex-director Mr. Jayant Jagannath of the company remained unattended due to his ill-health and also reported the shifting of the office of the assessee company to the new premises. After perusal of the material placed on record and the affidavit filed by the assessee we consider that there appears to be a reasonable cause for delay in filing appeal before the ld. CIT(A) of 42 days due to ill-health of the ex-director of the assessee company who was looking after the tax matter, therefore, we consider that decision of ld. CIT(A) in not condoning the delay of 42 days was not justified. We condone the delay in filing the appeal before the ld. CIT(A) by 42 days by the assessee. Further we observe that before the assessing officer the assessee has not made any compliance due to non-receiving the notices issued on the e-mail id of the ex-director as all the notices received on his e-mail remain unattended and due to illness and he had resigned from the company on 05.08.2019. In the light of the above facts and circumstances we restore this case to the file of the ld. CIT(A) for deciding on merit after considering the additional evidences to be filed by the assessee which could not be filed before the assessing officer

because of not attending the proceeding due to the ill-health of the ex-director of the company as discussed above in this order. The Id. CIT(A) is directed to adjudicate this case on merit after providing adequate opportunity to the assessee. The assessee is also directed to make compliance before the Id. CIT(A) without any failure, therefore, the appeal of the assessee is allowed for statistical purposes.

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

Order pronounced in the open court on 21.06.2024

Sd/-

(Rahul Chaudhary)
Judicial Member

Sd/-

(Amarjit Singh)
Accountant Member

Place: Mumbai

Date 21.06.2024

Rohit: PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.