

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH MUMBAI

**BEFORE MS. KAVITHA RAJAGOPAL, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No. 4414/MUM/2023
Assessment Year: 2011-12**

Real Touch Multitrading Pvt. Ltd. Room No.19, Ground Floor, 29BDD Chawl, Sakubai Mohite Marg, Near Bawala Masjid, Lower Parel, Mumbai – 400 013 (PAN : AAECR9670C)	Vs.	Income Tax Officer – 4(3)(2), Mumbai
(Appellant)		(Respondent)

Present for:

Assessee : Shri Mahesh Saboo, CA
Revenue : Smt. Mahita Nair, Sr. DR

Date of Hearing : 19.06.2024
Date of Pronouncement : 26.06.2024

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld. CIT(A), National Faceless Appeal Centre, Delhi vide order no. ITBA/NFAC/S/250/2023-24/1057502993(1), dated 30.10.2023 passed against the assessment order by Income Tax Officer, 4(3)(2), Mumbai, u/s. 143(3) r.w.s.147 of the Income-tax Act, 1961 (hereinafter referred to as the “Act”), dated 28.12.2018 for AY 2011-12.

2. Grounds taken by the assessee are reproduced as under:

“1) On the facts and circumstances of the case and in law, the Authorities below have erred in re-opening of the assessment u/s 147 of the I T Act as there was no reason to believe with the AO that any income had escaped assessment as

provided under the provisions of section 147 of the IT Act and hence the re-opening of the assessment was bad in law and against the provisions of Income Tax Act, 1961 and rules made thereunder.

2) On the facts and circumstances of the case and in law the authorities below have erred in making an addition of Rs. 5,26,37,000/- u/s 68 of the IT Act, and the reasons assigned for doing so was wholly wrong, irrelevant and contrary to the facts of the case, particularly despite having submitted all the relevant details giving therein the name, address and PAN of the lending parties and therefore this is not in accordance with the provisions of Income Tax Act, 1961 and rules made thereunder and against the principles of natural justice.

3) On the facts and circumstances of the case and in law, the Authorities below have erred in levying the interest u/s 234B and 234C of the I T which was wholly wrong, and against the provisions of Income Tax At, 1961 and rules made thereunder.

4) On the facts and circumstances of the case and in law, the Authorities below have erred in initiating the penalty proceedings u/s 271(1)(c) of the Income Tax Act, 1961 which were wholly wrong, irrelevant, and not in accordance with the facts and circumstances of the case as no income is concealed nor any inaccurate particulars were furnished.”

3. Brief facts of the case are that assessee is engaged in the business of trading and investment. Assessee filed its return of income on 27.12.2011, reporting total income at Rs.243/-. Subsequently, case of the assessee was reopened by issuing notice under section 148 dated 27.03.2018 by recording the reasons to believe that assessee had raised share capital by issuing 1,19,050 shares at face value of Rs.10/- each for share premium aggregating to Rs.4,64,21,700/- at the rate of Rs.390/- per share. Ld. Assessing Officer noted in this respect that total credit received by the assessee in its bank account no.910020043031162 for period from 01.10.2010 to 26.03.2011 was Rs.5,26,37,000/-. Necessary details and documents were called for to substantiate the genuineness and credit worthiness of the parties to whom shares were issued at premium. After considering the submissions made by the assessee, the Ld. Assessing Officer held that assessee had failed to prove the bonafides of the share subscribing companies. He thus, treated the amount as un-explained cash credit

u/s. 68 of the Act and added it to the total income. Aggrieved, the assessee went in appeal before the Ld. CIT(A).

4. Ld. CIT(A) has observed that notices for hearing were issued fixing dates for hearing on three occasions. According to him except for one adjournment, there was no compliance on the part of assessee. In absence of any written submission from the assessee, the appeal of the assessee was dismissed. Aggrieved, assessee is in appeal before the Tribunal.

5. Before us, the Ld. Counsel for the assessee strongly submitted that assessee had filed a paper book and attended hearing in the physical mode which has not been taken into consideration by the Ld. CIT(A), while disposing the appeal.

5.1. Before us, the ld. Counsel for the assessee at the outset submitted that all the submissions had been made by the assessee both before the AO as well as the ld. CIT(A). Before the ld. CIT(A), submissions were made in the regime of physical hearings. Subsequently, in the year 2020, the first appellate proceedings moved into faceless regime. Ld. CIT(A) has not taken into cognizance the proceedings undertaken during the physical hearings. Further, he submitted that no notices for fixing hearing were received by the assessee except for one against which an adjournment was sought. Fact of this is already noted in the impugned first appellate order.

5.2. Owing to these facts, it was submitted that the matter may be remanded back to the file of ld. CIT(A) for *denovo* meritorious adjudication by taking into consideration the submissions already on record made during the course of physical hearings. It was also prayed that reasonable opportunities may be given to the assessee to make any further submissions, if so required.

6. Per contra, ld. Sr.DR raised no objection on the prayer made by the ld. Counsel.

7. We have heard the rival contentions and perused the material on record. We note that assessee had made its submissions alongwith relevant documentary evidences in the course of assessment proceedings, fact of which is noted in the impugned assessment order. However, an adverse view had been taken by the ld. AO for which the matter went into appeal. At the first appellate stage, there are lapses on the part of the assessee to attend the hearings for an effective and meritorious disposal of its appeal. Also, ld. CIT(A) has dismissed the appeal for lack of prosecution.

7.1. Section 250 of the Act provides for procedure to be adopted while disposing of the appeal by the Ld. CIT(A). Sub-section (4) of section 250 of the Act provides that the Ld. CIT(A) may, before disposing of any appeal, make such further inquiry as he thinks fit, or may direct the Assessing officer to make further inquiry and report the result of the same to the Commissioner (Appeals). Further, sub-section (6) provides that the CIT(A) shall pass an order in writing and shall set the points for determination, the decision thereon and the reasons for the decision. Keeping in mind the provision of sections 250 of the Act, it is incumbent upon the Ld. CIT(A) to pass a speaking order on the merits of the case by examining, verifying and analyzing the material on record.

7.2. Considering the submissions made before us, in the interest of justice and fair play, we find it appropriate to remit the matter back to the file of ld. CIT(A) for *denovo* meritorious adjudication on the grounds of the appeal taken at the first appellate stage. We also direct the assessee to be diligent and cooperative in attending the hearings and make its submissions for expeditious and effective disposal of the

appeal. It should not seek adjournments unless warranted by compelling reasons.

7.3. Since the matter is restored to the file of Ld. CIT(A) for meritorious adjudication by passing a speaking order in terms of our observations made hereinabove, we are not expressing any views on the merits of the case so as to limit the appellate procedure before the Ld. CIT(A). The observations herein made by us in remanding the matter back to the file of Ld. CIT(A) will not impair or injure the case of the Revenue nor will it cause any prejudice to the defense/explanation of the assessee.

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

Order is pronounced in the open court on 26 June, 2024

Sd/-
(Kavitha Rajagopal)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 26 June, 2024

MP, Sr.P.S.

Copy to :

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai