

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH MUMBAI

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

**ITA No. 4111 & 4112/MUM/2023
Assessment Year: 2017-18 & 2014-15**

Morarjee Textiles Limited, 242, Ground Floor, The New Mahalaxmi Silk Mills, Mathuradas Mills Compound, N.M. Joshi Marg, Lower Parel, Mumbai – 400013 (PAN : AAACM2725R)	Vs.	Commissioner of Income Tax, NFAC, Delhi
(Appellant)		(Respondent)

Present for:

Assessee : None
Revenue : Smt. Mahita Nair, Sr. DR

Date of Hearing : 25.06.2024
Date of Pronouncement : 26.06.2024

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

Both the appeals filed by the assessee are against the orders of Ld. CIT(A), National Faceless Appeal Centre, Delhi vide order nos. ITBA/NFAC/S/250/2023-24/1056279425(1) and ITBA/NFAC/S/250/2023-24/1056278042(1) both dated 19.09.2023 passed against the assessment orders by Assistant Commissioner of Income Tax, Circle 7(2)(2), Mumbai, dated 23.12.2019 for Assessment Year 2017-18 and Income Tax Officer – 7(2)(3), dated 28.12.2016 for Assessment Year 2014-15 respectively, u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”).

2. In both the appeals the issues involved are common. From Ground No.1 assessee has contested the violation of the principles of natural justice at the end of Ld. CIT(A), who according to the assessee has passed the order in haste without considering the request of the assessee that appeal for AY 2013-14 which is root cause for the present appeal was pending. Assessee had made a request to dispose off the present appeal after the outcome of the appeal for 2013-14 lying before the same Ld. CIT(A).

3. Before us, none appeared to represent the assessee. From the perusal of the order of Ld. CIT(A), we note that various notices were issued fixing the date of hearing. On two such occasions, assessee had sought adjournments, which was granted. In the first appellate proceedings, assessee neither made any submissions nor provided any clarification or explanation for the grounds raised by it. In view of the assessee's non-compliance, Ld. CIT(A) observed his difficulty to adjudicate on the appeal for want of adequate submissions and clarifications and thus dismissed the appeal by sustaining the additions made by the Ld. Assessing Officer.

4. Brief facts of the case are that assessee filed its return of income on 30.10.2017, reporting a total income at 'Nil'. Assessment in this case for A.Y. 2013-14 was completed u/s. 143(3) of the Income Tax Act, 1961 wherein addition on account of disallowance of interest expense to the tune of Rs.4.68 crore (12.5% of Rs. 37.5 crore) was made on account of interest free fund of Rs.37.5 crore given to M/s. Integra Garments & Textiles Ltd out of interest bearing borrowed fund for entire year. In March 2013, the assessee had claimed to have purchased a piece of land for a consideration of Rs.40.51 Crore (which included Rs.37.5 Crore) from M/s. Integra Garments & Textiles Ltd and squared off the loan account by paying the shortfall amount. However, in assessment proceedings, this transaction was proved a

non-genuine transaction (paper transaction) on the basis of details submitted by the assessee and accordingly, the proportionate interest on Rs.37.5 crore @ 12.5% p.a. was disallowed.

4.1. Keeping in view of the fact of the case that during this year also, the said amount of Rs.40.51 crore was shown in the books of account of the assessee against land account, which was proved a non-genuine transfer, the proportionate interest @12.5% on Rs 40.51 crore was disallowed this year also

4.2. In the assessment orders pertaining to A.Y. 2013-14 and 2014-15, the issue involved, observations and findings in respect of the non genuine (paper) transaction of land purchase by the assessee was given in detail and all aspects were discussed

4.3. Since, in the balance sheet, the assessee is showing the amount of Rs.40.50Cr given to M/s Integra Garments & Textiles Ltd under asset as land, however, the said land purchase was proved non-genuine. The said fund of Rs. 40.51Cr paid to M/s Integra Garments & Textiles Ltd was out of interest bearing loan was still lying outstanding with M/s Integra Garments & Textile Ltd. Following the conclusion of the preceding year i.e., Assessment Year 2013-14, the proportionate interest @ 12 5% on Rs.40.51Cr was found disallowable in the present assessment year also.

4.4. Assessee made its submission in the course of assessment proceedings which were not found acceptable by the Ld. Assessing Officer. He completed the assessment by making a disallowance u/s.36(1)(iii) of Rs.5,06,37,500/-. Aggrieved, assessee went in appeal before the Ld. CIT(A), which has been dismissed off as noted above. Aggrieved, assessee is in appeal before the Tribunal.

5. Before us, even though none appeared to represent the assessee, we have taken up the two appeals for adjudication, *ex parte qua* the assessee with the assistance of Ld. Sr. DR and by taking into

consideration material on record before us. From the perusal of the orders of the authorities below, we note that assessee had made its submissions before the Ld. Assessing Officer, which were found not acceptable.

6. Before the Ld. CIT(A), assessee had made a submission that the root cause of the present appeal has arisen out of the cascading effect starting from AY 2013-14 which is also in appeal before the Ld. CIT(A) and pending for disposal. It was submitted that the outcome of the appeal for AY 2013-14 has direct bearing on the appeals for other subsequent years, also pending before the Ld. CIT(A). However, Ld. CIT(A) chose to dispose off the present appeal by observing non-appearance of the assessee on various dates fixed for hearing without dealing with the appeal for AY 2013-14.

7. From the facts noted above, it is oozing out that the issue before us has taken a shape of legacy issue starting from AY 2013-14 and the outcome of appeal of this year has direct bearing on the appellate outcome of the subsequent years. To avoid multiplicity of proceedings, we find it appropriate to remit the matter back to the file of Ld. CIT(A) for *denovo* meritorious adjudication of the grounds of appeal taken at the first appellate stage. It is advisable that the appeal for AY 2013-14 be taken up on priority as a lead case, since its outcome has a cascading effect on appeals of the subsequent years on similar issues. Needless to say, that assessee be given reasonable opportunity of being heard to represent its case.

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. 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. Accordingly, grounds taken by the assessee in both the appeals are allowed for statistical purposes.

8. In the result, both the appeals of the assessee are 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