

आयकर अपीलीय अधिकरण
कोलकाता 'सी' पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'C' BENCH, KOLKATA**

श्री राजेश कुमार, लेखा सदस्य
एवं
श्री प्रदीप कुमार चौबे, न्यायिक सदस्य
के समक्ष

Before

**SRI RAJESH KUMAR, ACCOUNTANT MEMBER
&
PRADIP KUMAR CHOUBEY, JUDICIAL MEMBER**

**I.T.A. No.: 513/KOL/2022
Assessment Year: 2017-18**

***BRH Commodities Pvt. Ltd.....Appellant
[PAN: AACCB 5142 K]***

Vs.

ACIT, Circle-12(1), Kolkata.....Respondent

Appearances:

Assessee represented by: Miraj D. Shah, AR.

Department represented by: Guru Bhashyam, CIT (D/R).

Date of concluding the hearing : May 16th, 2024

Date of pronouncing the order : July 5th, 2024

ORDER

Per Pradip Kumar Choubey, Judicial Member:

This appeal filed by the assessee pertaining to the Assessment Year (in short 'AY') 2017-18 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the 'Act') by Id. Commissioner of Income-tax (Appeals)-NFAC, Delhi [in short Id. 'CIT(A)'] dated 14.07.2022 arising out of the assessment order framed u/s 144 of the Act dated 25.12.2019.

2. The brief facts of the case of the appellant are that the appellant being a private limited company filed its return of income for the AY 2017-18

disclosing therein loss of Rs. 8,28,911/-. The case of the assessee was selected for scrutiny and after scrutiny ld. AO made addition of Rs. 50 lakh on account of loans and advances as unexplained cash credit u/s 68 of the Act. The AO also made addition of Rs. 19,60,00,000/- on account of share capital introduced during the year as unexplained cash credit and after completion of the assessment total income assessed at Rs. 24,60,00,000/-. The ld. Counsel for the assessee challenges the impugned order of the ld. CIT(A) on various grounds as it reveals from the grounds of appeal mentioned. In course of argument, the ld. Counsel for the assessee submitted that the AO and the ld. CIT(A) have passed impugned order on the ground that the assessee failed to provide specific details as required vide notice u/s 142(1) of the Act. The ld. Counsel for the assessee further submits that the impugned order was passed on the ground that documents and explanation for the relevant assessment year had not been provided by the assessee. The prayer of the ld. Counsel for the assessee is that the assessee has given an opportunity to file the documents as well as details as asked by the AO and the ld. CIT(A) to place his case. Ld. Counsel for the assessee submits that the assessee has all those documents with respect to his grievance for the claim though due to some certain reasons the assessee could not be able to file before the AO and ld. CIT(A).

3. On the contrary, ld. D/R opposes the submission thereby submitting that assessee has several times been given an opportunity to submit but he failed and at last the AO and the ld. CIT(A) has passed order that assessee has nothing to say.

4. We have perused the impugned order and find that before the AO the assessee made a submission via e-filing portal and submitted the details of the business and the bank accounts. The AO has sent a notice and requested to provide the documents and explanation but the assessee failed to provide any document or explanation. We further notice that on account of failure of filing specific documents, the AO has passed the order against the assessee.

4.1. We have perused the order of the ld. CIT(A) and find that before the ld. CIT(A) appellant has failed to file any documents which is apparent from the order which is as under:

“5. In this case, Notice dated 29.01.2021 was issued but appellant filed an adjournment request on 11.02.2021. Again, Notices dated 23.12.2021, 12.04.2022 and 25.06.2022 were issued but appellant neither submitted any reply or document in this case nor did it request for adjournment again. Therefore, notice dated 05.07.2022 was issued to the appellant giving him final opportunity to file its reply. However, appellant did not submit any reply or document against the final opportunity provided to it through notice dated 05.07.2022. It is clear in this case that initially appellant responded on single occasion to file adjournment request only, which was provided to him. Thereafter, it chose not to reply further to the subsequent notices issued to it.

5.1. It is clear from the above that the appellant has been granted several opportunities to represent its case in the appellate proceedings but has failed to make any submissions in support of the grounds of appeal filed by it. The appellant is not interested in prosecuting the appeal filed by it. In the appellate proceedings, burden of proof lies on the appellant to prove that the facts and the findings of the Assessing Officer are incorrect. Since the appellant has chosen not to attend the hearing, the appeal is decided on the basis of material available on record.”

4.2. on perusal of the above facts, it is clear that the order passed against the assessee only on this ground that appellant failed to submit any reply or document before the ld. CIT(A) with regard to his claim. The prayer of the appellant is that he has given an opportunity to place all those documents before the ld. CIT(A). For the ends of justice, we are in this view that to give an opportunity to the appellant to place all those materials in support of their claim before the ld. CIT(A). Accordingly, the case record is restored to the file of the ld. CIT(A) for hearing afresh after giving an opportunity to the appellant for filing documentary evidences and materials whatever the assessee wants to file in support of their claim. Accordingly, the impugned order is set aside. The assessee is directed to cooperate in the proceedings and no unnecessary adjournment will be allowed.

5. In the result appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 5th July, 2024.

Sd/-

[Rajesh Kumar]

Accountant Member

Dated: 05.07.2024

Bidhan (P.S.)

Copy of the order forwarded to:

1. **BRH Commodities Pvt. Ltd., 14/1, Paul Mansion, 1st Floor, 6, Bishop Lefroy Road, Kolkata, West Bengal, 700020.**
2. **ACIT, Circle-12(1), Kolkata.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

//True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata