

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**
BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No. 187/Ind/2023
(Assessment Year: 2018-19)

Moebius Trade Pvt. Ltd. Resulting Company after merger of Exotic and Speciality Fats Pvt. Ltd. Indore	Vs.	ACIT-II Bhopal
(Appellant / Assessee)		(Respondent/ Revenue)
PAN: AAHCM 4176D		
Assessee by	Shri Ajay Tulsian AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	20.12.2023	
Date of Pronouncement	21.12.2023	

ORDER

Per Vijay Pal Rao, JM:

This appeal by the Assessee is directed against the order dated 23.02.2023 of Commissioner of Income Tax(Appeal), for Assessment Year 2018-19. The assessee has raised following grounds of appeal:

“1. That the Learned CIT(A) erred in dismissing the appeal filed by the appellant for non-prosecution and thereby confirming the addition made by the Ld. Assessing Officer. That on the facts and in the circumstances of the case, the said dismissal of appeal is wrong and bad in law and it is prayed that the order of the Ld. CIT(A) may very kindly be set aside.

1.1 As an alternate and without prejudice to above it is prayed that the Ld. CIT(A) may very kindly be directed to give another opportunity of being heard to the appellant and pass the order on merits of the case.

2. That the Learned CIT(A) in effect by dismissal of appeal, erred in upholding the action of the AO of passing the assessment order even when the assessment for this year ought to be abated in view of the search conducted. That on the facts and in the circumstances of the case, the assessment order passed is bad in law and is prayed to be set aside.

3. That the Learned CIT(A) in effect by dismissal of appeal, erred in upholding the action of the AO of passing the assessment order in the name of a non-existing entity. That on the facts and in the circumstances of the case, the erstwhile company M/s Exotic and Speciality Fats Pvt. Ltd. having merged with M/s Moebius Trade Pvt. Ltd., which fact was well within the knowledge of the AO, the assessment order passed is bad in law and is prayed to be set aside.

4. That the Learned CIT(A) in effect by dismissal of appeal, erred in upholding the action of the AO of making an addition of Rs. 9,771/- on account of penalty On TDS. That on the facts and in the circumstance of the case, the disallowance of penalty on TDS is wrong and bad in law and is prayed to be deleted.

5. That the Learned CIT(A) in effect by dismissal of appeal, erred in not allowing the deduction u/s 80G of Rs. 85,020/- claimed on account of donation paid by the appellant. That on the facts and in the circumstances of the case the and in law the said claim made by the appellant is legit and is allowable which is prayed to be now allowed.

6. That the Learned CIT(A) in effect by dismissal of appeal, erred in upholding the action of the AO treating the loans written off by the appellant amounting to Rs. 6,22,00,000/- as unexplained cash credit u/s 68 of the Act and thereby charging the same to tax u/s 115BBE of the Act. That on the facts and in the circumstance of the case, the addition made is wrong and bad in law and is prayed to be deleted.

7. That the Learned CIT(A) in effect by dismissal of appeal, erred in upholding the action of the AO of disallowing the claim of interest paid to bank of Rs. 45,66,141/-. That on the facts and in the circumstance of the case, the said claim of interest paid by the appellant to the bank is proper and the addition made is wrong and bad in law and is prayed to be deleted.

8. That the Learned CIT(A) in effect by dismissal of appeal, erred in upholding the action of the AO of making addition of Rs. 241,71,80,142/-

by treating the advances given as unexplained expenditure u/s 69C of the Act and thereby charging the same to tax u/s 115BBE of the Act. That on the facts and in the circumstance of the case, the addition made is wrong and bad in law and is prayed to be deleted.”

2. The Ld. AR of the assessee has submitted that the CIT(A) has passed ex-parte order and dismissed the appeal of the assessee thereby confirming all the additions made by the AO. He has further submitted that the order of the AO is invalid on various grounds as the assessment was framed in the name of non-existing entity and further due to the search and seizure action in the case of the assessee on 18.02.2021 the assessment got abated but the AO without considering this objection of the assessee has passed the assessment order on 27th April 2021 which is invalid and void ab initio being abated by virtue of search and seizure action on 18.02.2021. Ld. AR has further submitted that these objections were taken by the assessee in the grounds of appeal before the CIT(A) but the CIT(A) has rejected the objections on the ground that the AO has not mentioned about the search and seizure proceedings on the Daga group. He has asserted that when the search was already conducted on 18.02.2021 and assessment proceedings were pending on that date then the said assessment got abated and order passed by the AO on 27th April 2021 is illegal and void ab initio. He has explained that the return of income was filed by the erstwhile company i.e. Exotic And Speciality Fats Pvt. Ltd. but subsequent on 21st August 2019 Exotic merged with Moebius Credit & Capital Pvt. Ltd. as per order of NCLT order dated 21.08.2019. The AO has duly acknowledged this fact of merger but

wrongly mentioned the date of merger as on 19.02.2018 instead of 21st August 2019. He has further pointed out that the name of Moebius Credit & Capital Pvt. Ltd. was changed to Moebius Trade Pvt. Ltd. as per the certificate of ROC dated 23.03.2020 placed at page no.27 of the paper book. He has also referred to the Panchnama and submitted that warrant of authorization was issued against three entities including Moebius Credit & Capital Pvt. Ltd, whereby the search was carried out on 18.02.2021. Thus, ld. AR has submitted that assessment order passed by the AO is invalid being already abated due to search and seizure action in the case of the assessee on 18.02.2021.

3. On the other hand, Ld. DR has submitted that the CIT(A) has specifically mentioned that the AO has not mentioned anything about search in the assessment order and therefore, it is only a matter of record to be verified. He has relied upon the orders of the authorities below.

4. We have considered rival submissions as well as relevant material on record. The assessee has raised the grounds against the validity of the assessment order passed by the AO firstly that the assessment order is passed against non-existing entity and secondly that the assessment was got abated in view of the search and seizure action u/s 132 of the Act on 18.02.2021 and hit by first proviso to section 153A of the Act. At the outset, we note that the assessee has also raised these objections before the CIT(A) in

ground no.1 & 2 which are reproduce in the impugned order as under:

“1. On the facts and the circumstances of the appellant's case and in law, the Ld. Assessing Officer erred in passing the assessment order which is illegal, bad- in-law and void ab-initio for want of jurisdiction.

2. On the facts and the circumstances of the appellant's case and in law, the Ld. Assessing Officer erred in passing the assessment order despite the fact that the assessment for the year under consideration stands abated in view of I" Proviso to section 153A of the Act,”

5. Thus, it is clear that the assessee challenged the jurisdiction of the AO to frame the assessment but the CIT(A) has rejected those grounds by observing in para 3.1.2 as under:

“3.1.2 I find that there is no mention of search and seizure proceedings on Daga group on 18.02.2021 in the assessment order. Whether warrant of authorization u/s 132 of the Act was executed on the appellant, the assessment order is silent on this fact. During appellate proceedings, despite several opportunities as elaborated in para 1.2 of this order, the appellant has not submitted copy of panchnama drawn in its case. Therefore, it is not ascertainable that the warrant of authorization u/s 132 of the Act was executed during the search and seizure proceedings on Daga Group of Betul and the appellant. In para 5 of the statement of facts, the appellant itself has stated that 'Thus, vide said letter, the appellant had also stated that to the knowledge of the appellant, his case is also covered under the search and thereby he had requested to drop the assessment proceedings as the said proceedings stands abated in view of the first proviso to section 153A of the Act. On perusal of the above submission, I find that the appellant itself was not sure whether warrant of authorization u/s 132 of the Act was

executed in its case. In absence of any conclusive proof, the claim of the appellant that the assessment proceedings were become abated cannot be accepted. The appellant failed to file evidences in this regard in the course of appellate proceedings. In the circumstances, claim of the appellant remains unsubstantiated. Unsubstantiated claim cannot be entertained. Therefore, I find no merit in the above grounds of appeal. Accordingly, appeal on the above grounds is dismissed.”


6. It is pertinent to note that the search and seizure action is a matter of record ought to have been verified by the CIT(A) by calling report from the AO. It is an action taken by tax authorities and particularly investigation wing of the department u/s 132 of the Act which could have been very well verified by the CIT(A) but instead of taking any steps to ascertain the fact of search and seizure action in case of the assessee he has simply dismissed the grounds merely on the basis that the AO has not mentioned in the assessment order about the search. On the directions of the bench Ld. AR of the assessee has filed copy of the assessment order passed u/s 153A of the Act dated 29th September 2022 which establishes that during the pendency of the assessment proceedings u/s 143(3) a search and seizure action was carried out u/s 132 of the Act on 18.02.2021 in case of Moebius Credit & Capital Pvt. Ltd which is an entity after the merger of the assessee on 21st August 2019. The AO

has also recorded the fact about the history of the assessee company in para 3 as under:

“3. The assessee, a Pvt. Ltd company, is into the business of dealing in on its own account or as commission agents or otherwise of all kinds of oils including synthetic, edible, non-edible, refined oils, deodorized and hydrogenated oils, vegetable oils etc. The assessee is also carrying on business of trading in commodities and agricultural products and work as investor and/or hedger in all commodities, commodity derivatives and agricultural products. On 19-01-2018, the company was merged with M/s. Moebius Credit and Capital Private Limited as per NCLT Order.”

7. Undoubtedly there was a search in case of Daga group but it was doubted by the CIT(A) without any basis. Further the assessee has also placed on record the certificate of the ROC to show that the name of Moebius Credit & Capital Pvt. Ltd has been changed to Moebius Trade Pvt. Ltd., the same is reproduced as under:

(29)


सत्यमेव जयते
GOVERNMENT OF INDIA
MINISTRY OF CORPORATE AFFAIRS

Office of the Registrar of Companies
Everest, 100 Marine Drive, Mumbai, Maharashtra, India, 400002

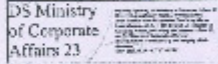
Certificate of Incorporation pursuant to change of name
[Pursuant to rule 29 of the Companies (Incorporation) Rules, 2014]

Corporate Identification Number (CIN): U74110MH2010PTC203557


I hereby certify that the name of the company has been changed from MOEBIUS CREDIT & CAPITAL PRIVATE LIMITED to MOEBIUS TRADE PRIVATE LIMITED with effect from the date of this certificate and that the company is limited by shares.

Company was originally incorporated with the name MORBIUS STEELS PRIVATE LIMITED.

Given under my hand at Mumbai this Twenty third day of March two thousand twenty.


V T SAJEEVAN
Registrar of Companies
RoC - Mumbai

Mailing Address as per record available in Registrar of Companies office:
MOEBIUS TRADE PRIVATE LIMITED
85, Floor-6, Plot-85, E, Maker Tower, G D Somani, Marg, World Trade Centre, Cuffe Parade,
Mumbai, Mumbai City, Maharashtra, India, 400005



8. It is evident from the record that there was a search and seizure action u/s 132 of the Act in case of the assessee on

18.02.2021 and assessment for the year under consideration was pending on that date consequently the same got abated in view of the second proviso to section 153A(1) which reads as under:

“Provided further that assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years [and for the relevant assessment year or years] referred to in this/sub-section] pending on the date of initiation of the search under section 132 or making of requisition under section 132A, as the case may be, shall abate”

9. Since the assessment for the year under consideration was pending on 18.02.2021 and therefore, by virtue of search and seizure action u/s 132 on 18.02.2021 same stand abated. Hence the assessment order passed by the AO u/s 143(3) after initiation of search u/s 132 is invalid and liable to be quashed being abated. As the assessment order is quashed being abated by virtue of search and seizure action therefore, the other grounds raised by the assessee become infructuous.

10. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 21 .12.2023.

Sd/-
(B.M. BIYANI)
Accountant Member

Sd/-
(VIJAY PAL RAO)
Judicial Member

Indore, 21.12.2023

Patel/Sr. PS

Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore