

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI "D" BENCH : MUMBAI

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER  
AND  
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

ITA.No.1761/Mum./2024  
Assessment Year 2016-2017

Rohan Bloodstock Private Limited, 112-122, Hira Bhavan, Raja Ram Mohan Roy Marg, Prathana Samaj, Mumbai - 400 004. Maharashtra.	vs.	The ACIT, Circle-5(3)(1), Aayakar Bhavan, Maharshi Karve Road, Mumbai. PIN – 400 020. Maharashtra.
(Appellant)		(Respondent)

For Assessee :	Shri Ravi Ganatra
For Revenue :	Smt. Sanyogita Nagpal CIT-DR On behalf of Smt. Mahita Nair, Sr. DR

Date of Hearing :	08.07.2024
Date of Pronouncement :	11.07.2024

**ORDER**

**PER SATBEER SINGH GODARA, J.M.**

This assessee's appeal, for assessment year 2016-2017, arises against the National Faceless Appeal Centre [in short the "NFAC"] Delhi's Din and Order No. ITBA/NFAC/S/250/2023-24/1060723281(1) dated 09.02.2024, in proceedings u/s.143(3) of the Income Tax Act, 1961 (in short "the Act").

Heard both the parties. Case files perused.

2. The assessee pleads the following substantive grounds in the instant appeal :

1. *“On the facts and in the circumstances of the case and in law, the Learned Commissioner of Income Tax (Appeal) erred in passing the ex-parte order and upholding the action of the Assessing Officer in passing the assessment order and dismissing the appeal in limine in gross violation of principal of natural justice, without affording any effective opportunity of being heard.*
2. *On the facts and in the circumstances of the case and in law, the Learned Commissioner of Income Tax (Appeal) erred in not granting at least one opportunity of being heard after 'Enablement of Communication Window' on 02.11.2022, post which no hearing notice was issued and an ex-parte order u/s 250 dated 09.02.2024 was passed by the Learned Commissioner of Income Tax (Appeal) on the basis of non-compliance to notices issued before enablement of*

*communication, that were covered by doctrine of impossible performance .*

- 3. On the facts and in the circumstances of the case and in law, the Learned Commissioner of Income Tax (Appeal) erred in upholding the action of the Assessing Officer in treating the sum of Rs 4,05,23,6337- as unexplained expenditure u/s 69C of the Income Tax Act.*
- 4. On the facts and in the circumstances of the case and in law, the Learned Commissioner of Income Tax (Appeal) erred in ignoring that section 69C of the Income Tax Act, is not applicable to the expenditure debited in the Profit and Loss account, as the 'source' of such expenditure is directly explained from the revenue side of the Profit and Loss account already offered to tax.*
- 5. On the facts and in the circumstances\*of the case and in law, the Learned Commissioner of Income Tax (Appeal) erred in upholding the action of the Assessing Officer in disallowing foreign travelling expenses of Rs 5,61,8347- u/s 37(1) of the Act.*

6. *On the facts and in the circumstances of the case and in law, the Learned Commissioner of Income Tax (Appeal) erred in upholding the action of the Assessing Officer in not allowing set-off of losses under the head business profession against income from other sources.*
7. *On the facts and in the circumstances of the case and in law, the Learned Commissioner of Income Tax (Appeal) erred in upholding the action of the Assessing Officer in initiating penalty u/s 271(l)(c) of the Act.*
8. *The appellant craves leave to add to, alter, amend, modify and /or delete all or any of the foregoing grounds of appeal.”*

3. We next note with the able assistance coming from both the parties that the CIT(A)-NFAC has recorded the assessee's continuous non-compliance for upholding the Assessing Officer's impugned action making sec.69C unexplained expenditure addition of Rs.4,05,23,633/- and disallowance of foreign travel expenditure amounting to Rs.6,61,834/-; respectively. It is evident that the learned CIT-NFAC's lower appellate discussion in pages 3 to 4 has nowhere complied with the rigor of sec.250(6) of the Act requiring it

to give points for determination followed by a detailed adjudication thereof. Faced with the situation, we deem it appropriate in the larger interest of justice to restore the assessee's instant appeal back to the CIT(A)-NFAC for its afresh adjudication, preferably within three effective opportunities of hearing, subject to the rider that it shall be the taxpayer's onus and responsibility only to file and prove all the relevant facts in consequential proceedings. Ordered accordingly.

4. This assessee's appeal is allowed for statistical purposes in above terms.

Order pronounced in the open Court on 11.07.2024

Sd/-  
[GIRISH AGRAWAL]  
ACCOUNTANT MEMBER

Sd/-  
[SATBEER SINGH GODARA]  
JUDICIAL MEMBER

Mumba, Dated 11<sup>th</sup> July, 2024

VBP/-

Copy to

1.	The applicant
2.	The respondent
3.	The Pr. CIT, Mumbai concerned
4.	D.R. ITAT, "D" Bench, Pune.
5.	Guard File.

//By Order//

//True Copy //

Sr. Private Secretary, ITAT, Pune Benches,  
Pune.