

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

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER

ITA.No.1789/Mum./2024
Assessment Year 2012-2013

Saffron Inc, 101, Vinod Villa, Old Nagardas Road, Andheri East, Mumbai – 400 069. Maharashtra. PAN ABEFS2784A	vs.	The Income Tax Officer, Ward – 31 (1)(1), Kautilya Bhawan, Bandra-Kurla Complex, Bandra (East), Mumbai – 400 051. Maharashtra.
(Appellant)		(Respondent)

For Assessee :	Shri PiyushChhaged
For Revenue :	Shri Laxmi Kanth, Sr. AR

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 2012-2013, arises against National Faceless Appeal Centre [in short the "NFAC"] Delhi's Din and Order No. ITBA/NFAC/S/250/2023-24/1061994744 (1) dated 05.03.2024, in proceedings u/s.143(3) of the Income Tax Act, 1961 (in short "the Act").

Heard both the parties. Case file perused.

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

1. *“On the facts and circumstances of the case and in law, the Learned Commissioner of Income Tax [Appeals) (NFAC) erred in passing an order u/s 250 r.w.s 254 confirming the additions made by the Learned Assessing Officer without giving an adequate opportunity of being heard.*
2. *On the facts and circumstances of the case, the Learned Commissioner of Income Tax (Appeals) (NFAC) erred in confirming the addition of Rs. 94,66,229/- on account of unsecured loans.*
3. *On the facts and circumstances of the case, the Learned Commissioner of Income Tax (Appeals) (NFAC) erred in confirming the adhoc disallowance at 10% of total expenses debited to profit & loss A/c without appreciating that the expenses were recorded in books of accounts on day-to-day basis which were duly audited and therefore adhoc disallowance is not permissible under the provisions of law.*

The appellant craves leaves to add, to delete or amend any of the above grounds of appeal at the time of hearing.”

3. Learned counsel vehemently argued during the course of hearing that the learned CIT(A)-NFAC herein has erred in law and on facts in upholding the unsecured loans addition of Rs94,66,229/- as well as confirming adhoc disallowance @ 10% of the total expenses debited to the P & L A/c.

4. We note in this factual backdrop that this is second round of proceedings between the parties before the tribunal. The assessee had admittedly filed its first round appeal ITA.No.1169/MUM/2023 and learned coordinate bench's order dated 31.07.2023 had restored the same back to CIT(A) as under:

2. The main grievance of the assessee is against the action of the Ld. CIT(A) dismissing the appeal ex-parte order without giving an opportunity of hearing to the assessee.

3. At the outset, the Ld. AR of the assessee submitted that assessee could not appear/present submission before the Ld. CIT(A) because of non-receipt of notices of hearing, which caused the non-appearance before the Ld. CIT(A). In order to buttress this submission, assessee has filed an affidavit sworn by the partner [of the firm/assessee] Shri Vikas Naresh Jain wherein it has been stated that the email id furnished before the Ld. CIT(A) was girdhariagarwal1000@gmail.com and, since the email Id was dis-functional due to technical snag,

assessee did not receive the notices [as asserted to have been forwarded by the Ld. CIT(A)]. Therefore, according to the Ld. AR, the assessee was in the dark as to the issuance of notice of hearing by Ld. CIT(A) and could not present its submission on the date of hearing and so, the Ld. CIT(A) has passed an ex-parte order without going into the merits of the grounds of appeal raised by the assessee. And therefore, pleaded that impugned ex-parte order may be cancelled and the appeal restored back to the file of the Ld. CIT(A) for hearing on merits.

4. Per contra, the Ld. DR opposes the request of the Ld. AR and submits that the Ld. CIT(A) has given four (4) opportunities to the assessee, and since it failed to appear/furnish submissions/documents, the assessee should not be given second innings.

5. We have heard both the parties and perused the records. We note that the impugned order of the Ld. CIT(A) is an ex-parte order and not passed on merits. The Ld. CIT(A) has noted to have issued four (4) notices; and since there was no compliance on the part of the assessee, has dismissed the grounds of appeal without going into the merits of the grounds raised by the assessee. Before us, the assessee has filed an affidavit of the partner of the assessee firm which shows that the assessee did not receive the notices due to the mal-functioning of the computer/email id furnished before the Ld. CIT(A). The assessee before us has given a new email Id in Form-36 vikasjain8238@gmail.com and submitted that email Id girdhariagarwal1000@gmail.com was non-accessible [which was the email Id given before Ld. CIT(A)]. Thus, we find that there was a reasonable cause for assessee not receiving the notice of hearing. In

such a scenario, we are inclined to set aside the impugned order of the Ld. CIT(A) and restore the appeal back to the file to the Ld. CIT(A) with a direction to adjudicate the grounds of appeal raised by the assessee in accordance to section 250(6) of the Income Tax Act, 1961 (hereinafter "the Act") law and the assessee is directed to file written submission/relevant documents to substantiate/ support the grounds of appeal raised before the Ld. CIT(A) and request for hearing in accordance to law.

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

5. Learned counsel submitted in this factual backdrop that the CIT(A)-NFAC has not has not ensured effective compliance of the tribunal's foregoing remand directions since he had issued all but one notice only on earlier given mail-ID and the correct mail-ID had been used only for a single instance. Learned counsel accordingly submits that the assessee is indeed ready and willing to prove it's case if one more effective innings before the CIT(A) is afforded in tune with the earlier remand directions.

6. We find no merit in the assessee's foregoing arguments. We wish to make it clear that we are in assessment year 2012-2013 wherein the Assessing Officer had framed his sec.143(3) assessment

way back on 27.03.2015. We observe that the assessee has not filed any supportive evidence at all right from the said first round and the very factual position continues till date. Faced with this situation, we are of the considered view that the assessee's endeavour to get remand directions from this tribunal again and again is nothing but abuse of the process of law only. We reiterate in this factual backdrop that once the assessee had admittedly been served notice; be it the last hearing before the CIT(A)-NFAC, it is its bounden duty to comply with the same by filing all the relevant details. We thus conclude that once the assessee has all along taken the learned lower authorities for a ride, his substantive ground(s) raised in the instant appeal deserve to be rejected only. We order accordingly.

7. This assessee's appeal is dismissed in above terms.

Order pronounced in the open Court on 11.07.2024

Sd/-
[AMARJIT SINGH]
ACCOUNTANT MEMBER
Mumbai, Dated 11th July, 2024
VBP/-

Sd/-
[SATBEER SINGH GODARA]
JUDICIAL MEMBER

Copy to

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

//By Order//

//True Copy //

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