

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A", MUMBAI

BEFORE SHRI PRASHANT MAHARSHI, ACCOUNTANT MEMBER AND
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER

ITA 2029/Mum/2024
(Assessment year : 2017-18)

Aamby Valley Global Sports Limited, Hotel Sahara Star Opposite domestic Airport, Vile Parle (E), Mumbai,400099 PAN : AAKCS3394L	vs	Income-tax Officer, Mumbai Room No.205, 2 nd Floor, Aayakar Bhawan, Maharshi Karve Road, Mumbai-400 020
APPELLANT		RESPONDENT

Assessee by : Shri Gaurav Bansal
Respondent by : Shri Manoj Kumar Sinha (SR.DR.)
Date of hearing : 08/07/2024
Date of pronouncement : 10/ 07/2024

ORDER

PER ANIKESH BANERJEE, J.M:

Instant appeal of the assessee is preferred against the order of the National Faceless Appeal Centre, Delhi [for brevity, 'Ld.CIT(A)'] passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), for Assessment Year 2017-18, date of order 19.02.2024. The impugned order was emanated from the order of the Id. Income-tax Officer, Ward 9(1)(1), Mumbai (in short, 'the A.O.') passed under section 143(3) of the Act date of order 28/12/2019.

2. The assessee has taken the following grounds of appeal:-

“1. That the Ld. CIT(A) has erred in law and on facts and circumstances of the case in deciding the appeal ex-parte.

2. That the Ld. CIT(A) has erred in law and on facts and circumstances of the case in not allowing a proper opportunity to the appellant to represent the case and the order passed is against the principle of audi alteram partem and not tenable in law and deserves to be vacated.

3. That the Ld. CIT(A) has erred in law and on facts and circumstances of the case in not deciding the various grounds of appeal taken by the appellant and not considering the statement of facts while deciding the appeal, which renders the order passed as not tenable in law and deserves to be vacated.

4. That the Ld. CIT(A) has erred in law and on facts and circumstances of the case in confirming the addition of Rs.1,04,51,465/- under section 68 of the Income-tax Act, 1961 without considering the fact that the addition has not been made by the Assessing Officer in respect of any cash credit or cash deposit in the books of the appellant, but is in the nature of an addition made for alleged unexplained deposit in the bank account.

5. That the Ld. CIT(A) has failed to appreciate that the appellant is a Limited Company and there is no income which can be attributed to earning of undisclosed income, which can be subjected to tax under section 68 of the Income-tax Act, 1961 and, therefore, the addition made by the Assessing Officer deserves to be deleted.

6. That the Ld. CIT(A) has failed to appreciate that the Assessing Officer has added a sum of Rs.1,04,51,465/- to the income of the appellant, which amount was already included in the receipts shown by the appellant to the credit of Profit & Loss account and voluntarily stood offered to tax and, therefore, there was no

justification in adding the same by the Assessing Officer to the income of the appellant under section 68 of the Income-tax Act, 1961.

7. That the Ld. CIT(A) has failed to appreciate that the addition made by the Assessing Officer of the same amount which stands credited to the Profit & Loss account tantamount to a double addition and for this reason alone, the same deserves to be deleted.

8. That the appellant craves leave to add, alter, amend or withdraw any or all grounds of appeal at any time before or during the course of the hearing.”

3. The brief facts of the case are that the assessee deposited cash in the bank during the demonetization period. Out of the total cash deposit amount of Rs. 99,81,680/- part of SBN was deposited from dated 09/11/2019 to 29/11/2019. The assessment was framed under section 143(3) with the addition to Rs.1,04,51,465/- was added back with the total income of the assessee where the assessee has failed to establish the cash sale amount to Rs.1,04,51,465/- during the demonetization period and the Ld.AO has treated the deposit as ingenuine transaction and added back under section 68 of the Act. Accordingly, the tax was levied under section 115BE of the Act @60%. Aggrieved, the assessee filed an appeal before the Id. CIT(A). But Id. CIT(A) has passed an ex parte order without considering the merit of the case and upheld the assessment order. Being aggrieved, assessee filed an appeal before us.

4. The Ld.AR argued and placed that the appeal order was passed ex parte and the assessee was unable to comply with the notices due to lack of computer knowledge of accountant. The assessee is ready to explain the entire sale proceeds during the demonetization where the cash was deposited during this

period. The Ld.AR prayed for setting aside the matter before the Ld.CIT(A) for further opportunity.

5. The Ld.DR argued and relied on the order of the revenue authorities. The Ld.DR invited our attention in appeal order para 4 & 5 which are reproduced as below: -

"4. It is pertinent that in order to decide this appeal in a timely manner, a number of notices / communications / correspondences were made through ITBA portal to the appellant, viz., communications dated 15.01.2021, 13.12.2023, 25.01.2024 and 08.02.2024. However, there has been no compliances from the part of the appellant till date. There is no gainsaying that once the appeal is filed by the appellant, it is obligatory on its part to purposefully and co-operatively pursue the same in a worthwhile manner, which the appellant has evidently failed to do. Hence, in view of the aforesaid total non-compliance of the instant appeal on the part of the appellant, the instant appeal is adjudicated and disposed of, as under, ex-parte, primarily on the basis of documentation available on record. The appellant has failed to avail the opportunity to file / furnish the submissions / documents in support of the grounds of appeal though the appellant was offered for sufficient opportunity to file / furnish the submissions during the course of appellate proceedings. Furthermore, it is pertinent that the appellant has not sought any adjournment during the appellate proceedings.

5. In the result, the appeal of the appellant is dismissed."

6. We heard the rival submission and considered the documents available in the record. The addition was made amount to Rs.1,04,51,465/- under section 68 of the Act for deposit the cash in bank account during demonetization. In assessment proceedings and in appeal, the assessee was unable to explain the cash sale related to its business. The reasonable opportunity is denied before

Ld.CIT(A) as the Ld.CIT(A) has not considered the merit of the case. It will be justified that the assessee should get another opportunity before the Id. CIT(A) for representing the matter afresh. We are, therefore, of the opinion that interest of justice would be sub served if the matters are remitted back to the file of the Id. CIT(A) for consideration of assessee's plea. The Id. DR has not made any strong objection against the submission of the Id. AR. We are not expressing any views on the merits of the case so as to limit the appeal proceeding before the Ld. CIT(A). Needless to say, the assessee should get a reasonable opportunity of hearing for setting aside proceedings. On the other hand, the assessee should be diligent in setting aside appeal proceeding for expeditious disposal of appeal.

7. In the result, the **ITA 2029/Mum/2024** is allowed for statistical purposes.

Order pronounced in the open court on 10th day of July, 2024.

Sd/-

(PRASHANT MAHARSHI)
ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated: 10/07/2024
Pavanan

sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकरआयुक्त CIT
4. विभागीयप्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
5. गार्डफाइल/Guard file.

BY ORDER,

//True Copy//

(Asstt. Registrar), **ITAT, Mumbai**