

**IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH, MUMBAI**

**BEFORE SHRI PRASHANT MAHARISHI, AM  
AND  
SHRI RAJ KUMAR CHAUHAN, JM**

**ITA No. 279/Mum/2024**  
(Assessment Year: 2010-11)

Amita Multitrade Private  
Limited  
401/A, Pearl Arcade,  
Opp K Jewellers,  
Dawood baug Lane,  
Off JP road, Andheri West,  
Mumbai-400058

**(Appellant)**

Vs.

DCIT Central Circle 4(3)  
Room No. 1921, 19<sup>th</sup> Floor,  
Air India Building,  
Nariman Point,  
Mumbai-400 021

**(Respondent)**

**PAN No. AAICA1012D**

**Assessee by** : Shri Ashok Bansa &  
Shri Ajay Daga, ARs  
**Revenue by** : Shri Manoj Kumar Sinha, DR

**Date of hearing:** 18.07.2024  
**Date of pronouncement :** 26.07.2024

**ORDER**

**PER PRASHANT MAHARISHI, AM:**

01. ITA No.279/Mum/2024, is filed for A.Y. 2010-11 by Amita Multitrade Pvt. Ltd., Mumbai [ Assessee/ Appellant] against the appellate order passed by the learned Commissioner of Income-tax (Appeals)-52, Mumbai dated 1<sup>st</sup> December, 2023, wherein the appeal filed by the assessee against the assessment order passed under Section 143(3) read with section 147 of the Income-tax Act, 1961 (the Act) dated 25<sup>th</sup> October, 2017, was dismissed.

02. Assessee has raised following grounds of appeal:-

*"1. The Id. CIT(A) erred in disposing of the appeal ex-parte.*

*1.1. In any event, the Id. CIT(A) in deciding the appeal ex-parte erred in not disposing the grounds judiciously in as much as the facts brought to his notice in Form No. 35 were not enquired into by him having regard to the record available with the AO.*

*2. The Id. CIT(A) erred in holding that the assessment pursuant to notice u/s 148 of the Act was validly made.*

*2.1. In doing so, the Id. CIT(A) did not appreciate that assumption of jurisdiction u/s 147 of the Act based on reasons recorded as reproduced in the assessment order is void & illegal and, therefore, bad in law.*

*2.ii. Further in doing so, the Id. CIT(A) did not appreciate that commencement of assessment proceedings by issue of notice u/s 143(2) of the Act simultaneously with the furnishing of reasons recorded is not in accordance with the decision of the Apex Court in the case of GKN Driveshaft [259 ITR 19(SC)] as held by the jurisdictional high court in the case of Allana Cold Storage Co. vs. ITO 287 ITR 1 (Bom.); in the case of Asian Paints Ltd. vs. Dy. CIT (2008) 290 ITR 90 (Bom); and in the case of Bayer Material Science (P) Ltd. 382 ITR 333 (Bom.).*

2.iii. Moreover, the Id. CIT(A) did not appreciate that the AO made the addition on a ground other than the ground on which the reasons were recorded rendering the assessment order as null & void.

3. The Id. CIT(A) erred in holding that furnishing of statement of third party relied upon by the AO and opportunity of cross-examination of said party is not necessary in the present scenario which is in total disregard of the facts stated in the memo of appeal and contrary to the principles laid down by the Apex Court in the case of Andaman Timber Industries reported in (2015) 62 Taxmann.com 3(SC).

4. The Id. CIT(A) erred in confirming the addition u/s 68 of the Act of Rs. 10000000/- in respect of shares allotted at a premium.

4.1. In doing so, the Id. CIT(A) did not appreciate that the initial onus which lay on the appellant was fully discharged & the onus shifted to the AO who neither dislodged the material & evidence placed on record nor made any independent enquiry.

4.ii. Further in doing so, the Id. CIT(A) did not appreciate that in the facts of the case no addition could have been made in the hands of the appellant based on the binding decision of the jurisdictional high court in the case of Gagandeep Infrastructure (P) Ltd. in ITA No. 1613/2014 dt. 20.03.2017.

*4.iii. In any event, the Id. CIT(A) did not appreciate that no 'sum' was involved in allotment of the shares as the same was made to parties against their credit balances and, therefore, outside the purview of sec. 68 of the Act.*

*Your appellant, therefore, submit that the assessment order as upheld by the Id. CIT(A) be quashed and in the alternative the addition made by the AO & confirmed by the CIT(A) be directed to be deleted.*

*Your appellant craves leave to add to, delete, amend or alter all or any of the grounds of appeal at or before the date of hearing."*

03. Brief facts of the case shows that assessee is a company dealing in shares and securities filed its return of income on 19<sup>th</sup> September, 2010, at a loss of ₹5,220/-. Subsequently, the case of the assessee was reopened and notice under Section 148 of the Act was issued on 29<sup>th</sup> March, 2017. The assessee furnished a letter dated 31<sup>st</sup> March, 2017, to treat the original return filed as compliance under Section 148 of the Act. The assessee was provided with the reasons of reopening which were objected on 5<sup>th</sup> July, 2017, and such objections were disposed of on 7<sup>th</sup> February, 2017.
04. The reasons recorded showed that search on Mr. R.K. Kedia group of cases on 3<sup>rd</sup> June, 2014, wherein it was found that assessee has issued shares on substantial premium of ₹98 lacs for face value of ₹3 lacs. The shares



of the assessee company could not have such a high security premium in view of the financial statements of the assessee and therefore, share premium to the tune of ₹98 lacs was escaped income of the assessee as per reason to believe of the learned Assessing Officer.

05. The assessee was asked to explain the genuineness of the transaction. The assessee furnished some documentation about the companies which invested in the assessee. The learned Assessing Officer issued notices under Section 133(6) of the Act, however, the information received from the parties was not on the issues on which reply was called for. Summons was issued for further verification.
06. The learned Assessing Officer reproduced the statement of various persons and based on that concluded that assessee is unable to prove the nature of amounts received as share capital and amount of ₹1 crore received by the assessee is an accommodation entry through persons mentioned in the assessment order such as Mr. R.K. Kedia and Mr. Pravin Agarwal. The amount was added under Section 68 of the Act and assessment order was passed under Section 143(3) read with section 147 of the Act on 25<sup>th</sup> October, 2017.
07. The assessee aggrieved with the assessment order preferred the appeal before the learned Commissioner of Income-tax (Appeals). The learned CIT (A) provided ten opportunities to the assessee. The assessee did not avail any of the opportunities. Therefore, based on the statement of facts and information available, he upheld



the reopening of the assessment as well as confirmed the addition on the merit. Therefore, the appeal of the assessee was dismissed.

08. Aggrieved with that order, assessee preferred the appeal before us. Before us, the learned authorized representative has submitted a paper book containing 79 pages. However, the assessee did not give any reason that why the assessee could not appear before the learned Commissioner of Income-tax (Appeals). However, we find that as per ground no.1, the appeal was decided ex-parte. In this regard, we find that assessee has been given ten opportunities which are listed in paragraph no.1 of the appellate order. Three occasions assessee requested for adjournment. On seven occasions, there was non-compliance by the assessee. The learned CIT (A) categorically mentioned that all these notices are served on the assessee. The adjournment request of the assessee on three occasions were considered and accepted by the learned Commissioner of Income-tax (Appeals). Despite all these opportunities, the assessee did not appear before the learned Commissioner of Income-tax (Appeals). Therefore, the assessee is totally non-compliant before the learned Commissioner of Income-tax (Appeals).
09. Therefore, the learned CIT (A) considering the statement of facts decided the issue on the merits of the case. The appeal of the assessee was dismissed.
010. In paragraph no.11 of the learned CIT (A)'s order, he has reproduced the reasons given by the learned Assessing



Officer for making the addition of ₹1 crores. The learned CIT (A) has categorically held that the assessee has maintained Stoic Silence despite multiple opportunities and has not furnished a iota of evidence. In spite of that, we find that assessee should be heard before confirming the addition. In this case, the assessee was not heard. In view of the above facts, we restore the appeal of the assessee only on the issue of addition of ₹1 crores under Section 68 of the Act to the file of the learned CIT (A) with a direction to the assessee to deposit a cost of ₹10,000/- to the Prime Minister National Relief Fund and then Assessee ids directed to submit the details as called for by the Id Lower authorities, including production of the parties and compliances of the summons. The learned CIT (A) may decide the addition on the merits of the case, after providing assessee am opportunity of hearing.

011. In the result, the appeal of the assessee is allowed with above direction.

Order pronounced in the open court on 26.07. 2024.

Sd/-  
(RAJ KUMAR CHAUHAN)  
(JUDICIAL MEMBER)

Sd/-  
(PRASHANT MAHARISHI)  
(ACCOUNTANT MEMBER)

Mumbai, Dated: 26.07. 2024

*Sudip Sarkar, Sr.PS*

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT



4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar  
Income Tax Appellate Tribunal, Mumbai