

**IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, MUMBAI**

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI SANDEEP SINGH KARHAIL, JM

ITA No. 1232/Mum/2023

(Assessment Year: 2011-12)

Minutex Processors Pvt. Ltd.
6/10, vijay Nagar Sangh, Shaikh
Misree Road, Antophill,
Mumbai-400 037

Vs.

ITO, Ward 15(2)(3),
Room No.15B, GR. Floor,
Aaykar Bhavan
M.K. road,
Mumbai-400 020

(Appellant)**(Respondent)****PAN No. AACCM1084H****Assessee by** : None**Revenue by** : Ms. Riddhi Mishra, CIT DR**Date of hearing:** 10.07.2023**Date of pronouncement :** 26.07.2024**ORDER****PER PRASHANT MAHARISHI, AM:**

01. ITA No. 1232/Mum/2023, is filed by the Minutex Processors Pvt. Ltd (assessee /appellant), against the appellate order passed by the National Faceless Appeal Centre, Delhi [the learned CIT (A)], for A.Y. 2011-12, dated 28th February, 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) by the Income Tax Officer, Ward 15(2)(3), Mumbai, was dismissed.



02. This appeal was earlier decided ex-parte by order dated 27th July, 2023. Subsequently, recalled by MA No. 508/Mum/2023. Therefore, this recall matter is required to be heard as per the following grounds of appeal;-

"1) On the facts and circumstances of the case and in law the authorities have erred in passing an ex-parte order u/s 250 without affording any opportunity of being heard in the matter which is against the principles of natural justice and hence the order passed be quashed.

2) On the facts and circumstances of the case and in law the authorities below have erred in making/sustaining an addition of Rs. 13,19,00,000/- being the investment made by appellant treating as un- explained investment u/s 69 and the reasons assigned for doing so, were wholly wrong, inconsistent with the facts of the case and not in accordance with the provision of the Income Tax Act, 1961 and rules made there under.

3) On the facts and circumstances of the case and in law the authorities below have erred in making/sustaining an addition of Rs. 7,93,50,000/- being the un-explained cash credit u/s 68 and the reasons assigned for doing so, were wholly wrong, inconsistent with the facts of the case and not in accordance with the provision of the Income Tax Act, 1961 and rules made there under.

4) *On the facts and circumstances of the case and in law, the authorities below have erred in levying the interest u/s 234B and 234C of the IT which was wholly wrong, and against the provisions of Income Tax Act, 1961 and rules made there under.*

5) *On the facts and circumstances of the case and in law, the authorities below have erred in initiating the penalty proceedings u/s 271(1)(c) of the Income Tax Act, 1961 which were wholly wrong, irrelevant, and not in accordance with the facts and circumstances of the case as no income is concealed nor any inaccurate particulars were furnished.*

6) *The appellant craves leave to add, alter, modify and delete all or any of the aforesaid grounds of appeals on or before the date of hearing."*

03. Brief facts of the case shows that assessee is a company who filed its return of income on 11th August, 2012, at a total income of ₹1349/-. This was processed under Section 143(1) of the Act.
04. Subsequently, notice under Section 148 of the Income-tax Act, 1961 (the Act) was issued on 30th March, 2016. The reasons recorded shows that Assessee Company has invested in the shares of M/s Parvesh Construction Pt. Ltd. on 27th March, 2011, of 13,190 shares at ₹13,19,00,000/-. M/s Parvesh Construction Pvt. Ltd. is a loss making company and the investment in the share premium by the assessee is from unaccounted income keeping in mind the financial position of the company. The assessee did not



have any sales or receipt but only income from other sources of ₹8,000/-. It has share application money of ₹7.93 crores and further, has made investment of Rs 13.19 crores of shares shows that it is a shell company and assessee is not doing any business. Accordingly, the case of the assessee was reopened.

05. During the course of assessment proceedings, the assessee was issued a show cause notice with respect to the investment made of ₹ 13.19 crores. The show cause notice was replied in general manner. As the assessee is not carrying on any business and is a shell company which is used to launder money, It has a weak financials and do not have a capacity to invest and therefore, the addition was made of ₹13.19 crores. However, the learned Assessing Officer noted that identically sum has been added in A.Y. 2013-14, but it was found that this investment is pertaining to A.Y. 2011-12, and therefore, the addition was made to protect the interest of the Revenue.
06. The learned Assessing Officer further found that assessee has accepted share application money of ₹7,93,50,000/-. The assessee was asked to explain the details and nature, sources and genuineness of transactions of such receipt from four different companies. The assessee submitted the bank statement, audit report and the ITR of this company. Notice under Section 133(6) of the Act was issued to all these companies, but information was not received. Accordingly, another show cause notice was issued in



absence of any substantial business of the assessee. The learned Assessing Officer invoked the provisions of Section 68 of the Act and made an addition of ₹7,93,50,000/-.

07. The assessment order under Section 143(3) read with section 147 of the Act was passed on 29th December, 2016, wherein the return of income of Rs.1,349/- was assessed at ₹21,12,51,350/-.
08. Aggrieved with the same assessee preferred an appeal before the learned CIT (A). During the appellate proceedings, assessee was given five opportunities and assessee did not avail any of them therefore, the learned CIT (A) confirmed the addition on the merit. Assessee also challenged as per grounds of appeal reopening of the assessment, vide paragraph no.6.5, the learned CIT (A) upheld the same.
09. Against this appellate order the assessee preferred the appeal before ITAT which was earlier dismissed for failure to make submission, ex-parte and subsequently recalled.
010. Now before us, in such recall appeal assessee has submitted a paper book containing 190 pages. It was claim of the assessee that assessee has appeared before the learned CIT (A) and submitted a paper book which is submitted before us. However, the learned CIT (A) did not consider any of the submissions and dismissed the appeal of the assessee. It was stated that earlier in this appeal, Mr. Mahesh Saboo , CA appeared and submitted the information which was not considered. Therefore, the ex-

party order passed by the learned CIT (A) is against the principles of natural justice and therefore, liable to be quashed. The assessee also produced the written submission made on 30th August, 2017, before the learned CIT (A) which is stated to be not considered by him.

011. The learned Departmental Representative vehemently submitted that the learned CIT (A) has categorically stated that assessee was given several opportunities but assessee did not avail any of them and therefore, no fault can be found in the orders of the learned lower authorities. He specifically referred to paragraph no.5 of the order of the learned Commissioner of Income-tax (Appeals).

012. We have carefully considered the rival contentions and perused the orders of the learned lower authorities. It is stated before us that assessee has made detail submission on hearing on 30th August, 2017, before the learned Commissioner of Income-tax (Appeals). Written submission made on that date is placed at page no.1 to 10 of the Paper Book. The assessee has categorically stated before us that Mr. Mahesh Saboo , Chartered Accountant and Mr. Vora, Chartered accountant appeared before the learned CIT (A) and submitted the details. Apparently there is no mention in the paragraph no.5 of the order of the learned CIT (A) that hearing took place on 30th August, 2017, therefore, apparently it seems that hearing took place on 30th August, 2017 and subsequently, the appeal was migrated in the face less



appellate procedure. After that, the assessee was granted five opportunities but none of them was availed. Therefore, in the interest of justice and looking at the documentation in the form of Paper Book filed before us claiming that hearing took place on 30th August, 2017, It is apparent that submission made by the assessee has not been considered. In view of this, we restore all the grounds of appeal back to the file of the learned CIT (A), wherein assessee is directed to submit these details as and when called for immediately. The learned CIT (A) thereafter may examine the same and decide the issue afresh with respect to the grounds of appeal in accordance with the law. Accordingly, the appeal of the assessee is allowed with above direction.

013. As appeal is restored back to the file of the learned Assessing Officer, all other grounds on the merit are not adjudicated.

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

Order pronounced in the open court on 26.07.2024.

Sd/-
(SANDEEP SINGH KARHAIL)
(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