

IN THE INCOME TAX APPELLATE TRIBUNAL
Mumbai "SMC" Bench, Mumbai.

Before Shri Prashant Maharishi (AM)

I.T.A. No. 438/Mum/2024 (A.Y. 2012-13)

DPS Shares & Securities Pvt. Ltd. 414B, Rotunda Building, Bombay Samachar Marg Mumbai-400 023. PAN : AABCD1053A (Appellant)	Vs.	ITO Ward-4(1)(1) Aayakar Bhavan M.K. Road Mumbai-400 020. (Respondent)
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Assessee by	None
Department by	Shri R.R. Makwana
Date of Hearing	06.06.2024
Date of Pronouncement	26.07.2024

O R D E R

1. This appeal is filed by DPS Shares & securities private limited (assessee /appellant) for assessment year 2012 – 13 against appellate order passed by the National faceless appeal Centre Delhi (the learned CIT – A) dated 5/12/2023 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 dated 20/9/2019 passed by the income tax officer Ward – 4 (1) (1), Mumbai (the learned AO) was dismissed.
2. Assessee has raised several grounds of appeal but the grievance is that an addition of ₹ 4,608,300/- was made to the total income of the assessee which is confirmed by the learned CIT – A.
3. The brief facts of the case show that assessee though a company but did not file its return of income for assessment year 2012 – 13. A notice under section 148 of the act was issued on 14/3/2019 wherein it was found that assessee is a non-filer and has made cash deposit of

₹ 1337,000 with a banking company, source of which is not known. In response to the above notice assessee filed return of income on 10/4/2019 declaring a loss of ₹ 318,964/- . Subsequently notice under section 143 (2) was also issued on 22/7/2019 and notice under section 142 (1) was also issued on 17th/05/2019 along with the questionnaire but such notices were returned by the postal authorities with remark unclaimed. One more opportunity was given to the assessee on the email ID. In response to that one chartered accountant stated that they are not related to the stated party anymore and therefore there is no option of change of email address. Thereafter one inspector was deputed to serve the show cause notice personally on the director of the company. Ultimately one director of the company Mr Sujal shah appeared, but requested adjournment. The learned assessing officer also made an independent enquiry under section 133 (6) of the act with the bank of India and collected the copy of the bank statement in respect of three bank accounts of the assessee company wherein it was found that assessee has deposited cash of ₹ 4,608,300. The assessee was asked to explain the source of the cash deposit.

4. In response to the show cause notice on 12/9/2019 the assessee submitted that assessee company has run into financial crisis due to closure of the business and huge liability is to be paid. They approached one person Mr. Naresh saboo and Naresh Jain to deposit cash into their bank account and issued cheques to the parties which he would have. The assessee received a commission of 0.25% against the said deposit and issue of cheques. Assessee submitted details of cash deposits and cheques issued by submitting the cash account, bank account and the details of cheque issued. However the assessee could not furnish the details of the beneficiaries as desired by the learned assessing officer. And therefore the learned assessing officer made an addition as the assessee could not substantiate the source of

cash deposited. Accordingly the addition of ₹ 4,608,300/- was made to the total income of the assessee and assessment order under section 143 (3) read with section 147 of the act was passed on 20/9/2019. The assessee was also not given a benefit of the loss offered of ₹ 318,964 in response to the return filed under section 148 of the act.

5. Assessee approached the learned CIT – A wherein the notice of hearing was issued through email on 5/1/2021 where the request for adjournment was made for 20 days. Subsequently on 28/10/2023 notice was sent on email ID sujalsah067@yahoo.com which was mentioned in form number 35 but it bounced. Thereafter the learned CIT – A upheld the order of the learned assessing officer for the reason that appellant has not been able to show that it has furnished full details of beneficiaries to the assessing officer and also the claim that it on only 0.25% of the deposit as income has not been substantiated with anyone else's. He relied on the decision of the honourable Delhi High Court in case of D KGarg [2017] 84 taxmann.com 257 (Delhi).
6. Assessee aggrieved with the appellate order preferred appeal before us. Some authorised signatory of the assessee filed an adjournment letter dated 4 June 2024 in the registry. On the file there is no authorization letter issued to anybody by the assessee company and further it is also not known that who is the person who filed the letter of adjournment. On the appointed date none appeared before us. In view of this adjournment request of the assessee was rejected and we proceed to decide the issue on the merits of the case.
7. The learned departmental representative vehemently stated that assessee has not submitted any details before the learned assessing officer or before the learned CIT – A that who are the beneficiaries who the accommodation entry is provided therefore, it cannot be said that assessee is an accommodation entry provided and is to be assessed only on the commission income of 0.25%. He further referred to the

decision of the honourable Delhi High Court relied upon by the learned CIT – A.

8. We have carefully considered contention is raised by the learned departmental representative and perused the orders of the learned lower authorities. We find that before the learned CIT – A email notices sent to the email ID provided in form number 35 bounced. Therefore there is no notice to the assessee served. Before us also the same email ID is mentioned and address of the assessee wherein notices served and adjournment request was made. As the learned CIT – A has issued only one is a notice to the same email ID, we find that when the tribunal sent to the notices same were received at the registered office of the assessee at 4148, Rotunda building, Bombay Samachar Marg, , Mumbai – 23 and there was a response, at least for filing an adjournment.. Therefore in the interest of justice we set-aside the whole issue back to the file of the learned CIT – A – and to the assessee to submit the correct email ID to the jurisdictional assessing officer and the notices may be sent at the address given hereinabove. If the assessee appears and makes representation before the learned CIT – A, within 90 days from the date of this order, furnishes the details of the beneficiaries, then, the issue may be decided on the merits of the case. This is so because of the reason that assessee did not get any opportunity to represent its case before the learned CIT – A. Hence, without deciding any of the grounds of appeal on the merits of the case, and as the learned CIT – A has given only one opportunity by email ID which bounced, we restore the whole appeal on the merit back to the file of the learned CIT – A.
9. In the result appeal of the assessee is allowed for statistical purposes.
Order pronounced in the open court on 26th July , 2024.

Sd/-
(Prashant Maharishi)
Accountant Member

Mumbai : 26.07.2024

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai.
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

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