

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C": NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER**

**ITA No. 550/DEL/2024
Assessment Year: 2012-13**

M/s K & S Fincon Pvt. Ltd., Gali No. 5A, Qila Road, Firdaus Nagar, Aligarh-200201.	<u>Vs</u>	Income-tax Officer, Ward-14(1), New Delhi
PAN: AADCK 1783 A		
APPELLANT		RESPONDENT

Assessee represented by	Shri Sunil Gupta, CA
Department represented by	Ms. Anupama Singla, Sr. DR
Date of hearing	29.07.2024
Date of pronouncement	29.07.2024

ORDER

PER KUL BHARAT, JM:

This appeal, by the assessee, is directed against the order of the National Faceless Appeal Centre (NFAC), Delhi, pertaining to the assessment year 2012-13.

The assessee has raised following grounds of appeal:

"1. That in the facts and circumstances of the case, the Id. CIT(A)NFAC has erred in passing the ex parte order u/s 250 of the IT Act, 1961 and upholding the additions of Rs. 1,25,28,102 made by the Ld.AO u/s 68 of the I.T.Act.

2. *That in the facts and circumstances of the case Ld. CIT(A)- NFAC has erred in passing the ex parte order on the ground that no reply / submissions made of the hearing notices served on the email.*
3. *That in the facts and circumstances of the case the Ld. CIT(A) - NFAC has erred in not issuing and serving any physical/ by speed post notice of hearing before passing the impugned ex parte order and also failed to serve the final order physically/ by speed post*
4. *That in the facts and circumstances of the case the reopening the assessment as per notice u/s 148 dt. 29.03.2019 is time barred i.e. beyond four years as the original assessment u/s 143 (3) was already made on 30.03.2015.*
5. *That in the facts and circumstances of the case the Pr. CIT-05 has given approval without application of mind and in a mechanical manner and has simply mentioned that "Perused reasons recorded by the AO. I am satisfied that it is a fit case for issue of notice u/s 148 of the I.T. Act. Accordingly approval is accorded". Further the approval of the Pr. CIT-05 is undated.*
6. *That in the facts and circumstances of the case the Ld. AO has erred in issuing notice u/s 148 on 29/03/2019 as he has failed to mention when the information was received from DDIT(Inv), when the reasons for reopening were recorded and when its approval was granted by the Pr. CIT 05, Delhi as all are undated and are in gross violation of the guidelines for reopening issued by Hon'ble Delhi High Court in case of Sabh Infrastructure Ltd. Vs. ACIT*
7. *That in the facts and circumstances of the case the Ld. A.O. has erred in issuing notice u/s 148 and framing the assessment u/s 144/147 on the basis of information received from the Office of DDIT, Inv.- 1, Faridabad and its Approval from the Pr. Comm. of Income Tax, Delhi - 05.*
8. *That in the facts and circumstances of the case the Ld. AO has erred in framing the assessment merely on the report of the DDIT, Inv. I, Faridabad dated without recording his independent belief/ opinion that the income has escaped assessment.*
9. *That in the facts and circumstances of the case the Ld. AO has framed the assessment u/s 144/ 147 of the IT Act even when all the details were submitted and are available on the e portal.*

10. *That in the facts and circumstances of the case the assessment framed u/s 144/ 147 of the IT Act is bad in law as no DIN has been generated. The DIN generated is for the Asstt. Order u/s 143(3)/ 147 of the IT Act.*

11. *That in the facts and circumstances of the case the Ld. A.O. has erred in making addition of Rs. 1,25,28,102 on account of accommodation entry in the form of bogus expenses u/s 68 of the Income Tax Act while framing the assessment u/s 144/ 147 of the I.T. Act.*

12. *That in the facts and circumstances of the case the ld. AO has erred in making addition of Rs. 1,25,28,102 on the ground that "ledger account of M/s. Softech Enterprises and M/s. Global Traders in the books of M/s. Shree Ji Trading Corporation which is irrelevant to this case" even when the Shree Ji Trading Corporation was the proprietorship concern of M/s. K & S Fincon Pvt. Ltd and all the purchases were made through the proprietorship firm.*

13. *That in the facts and circumstances of the case the Id. AO has erred in making addition of Rs. 1,25,28,102 even when the notice u/s 133(6) was duly served & delivered to M/s. Softech Enterprises as it did not returned back.*

14. *That in the facts and circumstances of the case, the Ld. AO has erred in providing any tangible material and nexus to prove that the said transaction of Rs. 1,25,28,102 is an accommodation entry.*

15. *That in the facts and circumstances of the case the L. AD has erred in making the assessment without pointing out any defects in the details submitted/ uploaded on the e filing portal of the department.*

16. *That in the facts and circumstances of the case the Ld. AO has failed to find any defect in the books of accounts which were duly audited.*

17. *That in the facts and circumstances of the case the Ld. AO has erred in making the assessment in haste on 04 12 2019 even when the case was not getting time barred till 31.12.2010*

18. *That having regard to the facts and circumstances of the case, The Ld. A.O. has erred in not only levying the tax, interest but also initiating the penalty proceedings u/s 271(1) e) of the IT Act.*

19. *That the Appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other*

2. Facts, in brief, are that for A.Y. 2012-13 the Assessing Officer had received information from DDIT (Inv.)-I, Faridabad to the effect that assessee company had made payment of Rs. 1,25,28,000/- primarily in the form of bogus expenses to bogus concern viz. Softech Enterprises. Therefore, the case was re-opened u/s 147 of the Act and statutory notices were issued accordingly. In response to notice issued u/s 148 of the act, the assessee filed return declaring total income at Rs. 1,36,562/-. During assessment proceedings the assessee did not respond to statutory notices with questionnaire issued by the AO. The AO completed the assessment u/s 144/147 of the Act at Rs. 1,26,64,664/- by adding Rs. 1,25,28,000/-, treating the same as accommodation entry, u/s 68 of the Act. Aggrieved against it the assessee preferred appeal before the learned CIT(A) who dismissed the appeal and affirmed the action of the AO. Aggrieved against it the assessee has come up in appeal before the Tribunal.

3. Learned counsel for the assessee submitted that submissions were duly made before the Assessing Officer during the course of reassessment proceedings, however, being not satisfied with the explanation of the assessee the AO made the impugned addition of Rs. 1,25,28,102 u/s 68. He submitted that in appeal no notice of hearing was physically received by the assessee. The learned First Appellate Authority had issued notices of hearing on the email of legal consultant CA Sh. Mithlesh Kumar Aggarwal who unfortunately died on 23.11.2020 and after his

death his staff failed to verify notice received on his email and hence the same could not be replied. Learned counsel submitted that that since the learned CIT(A) did not afford adequate opportunity to the assessee to prove its case, the order of learned First Appellate Authority may be set aside and the matter may be restored to the file of learned CIT(A) for fresh adjudication on merits after affording reasonable opportunity of being heard to the assessee.

4. The learned DR opposed the submissions and submitted that assessee has been thoroughly negligent in pursuing its case.

5. We have heard rival submissions and perused the material available on record. The stand of the assessee is that in reassessment proceedings submissions were duly made before the Assessing Authority which were not considered by the AO and in appeal before the learned First Appellate Authority no physical notice of hearing was ever received by the assessee and the learned CIT(A) dismissed the appeal of the assessee, ex parte, without adverting on merit of the case and without affording adequate opportunity of hearing. Considering the totality of facts of the present case, in order to sub serve the interests of natural justice, we hereby set aside the order of learned CIT(A) and restore the matter to the file of learned First Appellate Authority for fresh decision after affording adequate opportunity of being heard to the assessee. Grounds are allowed for statistical purposes.

6. Appeal of the assessee is allowed for statistical purposes.

Order pronounced in open court on 29.07.2024.

Sd/-

(AVDHESH KUMAR MISHRA)
ACCOUNTANT MEMBER

Sd/-

(KUL BHARAT)
JUDICIAL MEMBER

MP

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI