

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

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI OMKARESHWAR CHIDARA, ACCOUNTANT MEMBER**

**ITA No.3780/M/2023
Assessment Year: 2015-16**

M/s. Sindoori Traders Pvt. Ltd., 301, A-Wing, 3 rd Floor, Solaris I 72 Saki Vihar Road, Andheri East, Mumbai - 470072 PAN: AAACS6166Q	Vs.	Deputy Commissioner of Income Tax 11(2)(1), Aayakar Bhavan, Churchgate, Mumbai – 400 020 Maharashtra
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Tanzil R. Padvekar, A.R.
Revenue by : Shri Manish Ajudiya, Sr. A.R

Date of Hearing : 18 . 07 . 2024
Date of Pronouncement : 24 . 07 . 2024

O R D E R

Per : Satbeer Singh Godara, Judicial Member:

This assessee's appeal for assessment year 2015-16 arises against the National Faceless Appeal Centre(NFAC) Delhi's DIN & order No.ITBA/NFAC/S/250/2023-24/1055584158(1) dated 30.08.2023, in proceedings under section 143(3) r.w.s. 147 of the Income Tax Act, 1961 (in short 'the Act').

2. Heard both the parties at length. Case file perused.
3. The assessee pleads the following substantive grounds in the instant appeal:

“1. Considering the facts and circumstances of the case and in law, exercise of jurisdiction u/s 147 of the Income Tax Act, 1961 (hereinafter, for the sake of brevity, referred to as 'the Act'), and the re-opening of assessment and issue of notice u/s 148 of the Act be considered as bad in law and void abinitio and the assessment made in pursuance thereof be declared as bad in law and void abinitio.

2. Considering the facts and circumstances of the case and in law, re-opening of assessment ought not to have been resorted to exercise of power of re-opening of assessment u/s 147 of the Act after obtaining permission from the Principal Commissioner of Income Tax since the sanctioning authority in the case is the Joint Commissioner of Income Tax since four years had not elapsed from the end of Assessment year sought to be re-opened. This ground of appeal was not taken up before the Commissioner (Appeals). However since the same does not amount to examination of fresh evidence, it is prayed that the same be admitted.

3. Considering the facts and circumstances of the case and in law, re-opening of assessment ought not to have been

resorted to add income as per deeming provision u/s 50C of the Act and addition to income ought not to have been resorted to on this issue and the appellant prays that the addition made on account of Section 50C of the Act, being deeming provision, be deleted.

4. Considering the facts and circumstances of the case and in law, addition to the income of the appellant ought not to have been made when proper and adequate opportunity has not been provided to the appellant and addition has been made without issue of any show cause notice proposing any addition to the income of the appellant, and the addition to income made, therefore, ought to be deleted.

5. Considering the facts and circumstances of the case and in law, the assessment order be set aside and be declared null and bad in law as the procedure prescribed by the Honourable Supreme Court of India in the case of GKN Driveshafts (India) Ltd. v/s Income Tax Officers & Others in Civil Appeals Nos. 7731 to 7737 of 2002 [reported in 2002 (2003) 179 CTR SC 11; (2003) 259 ITR 19 (SC); (2002) 125 Taxman 963 (SC)] has not been followed.

6. Considering the facts and circumstances of the case and in law, the Assessing Officer ought to have considered that the re-computation of capital gains results in a loss and set off to the lower of notional addition to income and difference between gains shown and gains (loss) computed

ought to have been considered and as a result set off ought to have been granted, which the appellant prays be granted to the appellant.

7. Considering the facts and circumstances of the case and in law, the Assessing Officer failed to appreciate that the deeming provisions of section 50C of the Act are not applicable to the appellant and the application of the same, therefore, ought to be deleted.

8. Considering the facts and circumstances of the case and in law, the Assessing Officer ought to have considered revised computation of capital gains which resulted in a loss and the appellant prays that the revised computation of capital gains resulting in loss of Rs. 4,46,15,501 be considered and allowed since the asset was used for letting out and income of the appellant has been from Income from House Property on which depreciation is not allowable contrary to the claim of the Learned Commissioner (Appeals) that depreciation u/s 32(2) of the Act would have been accounted for, claim being made without any basis.

9. Considering the facts and circumstances of the case, such other and further reliefs be granted to the appellant, as may be considered and deemed necessary.

10. The appellant craves leave to add and/or alter and/or amend any ground(s) of appeal as may be considered necessary.”

4. It emerges at the outset with the able assistance coming from both the parties that there is hardly much a need for us to dwell deeper in the relevant factual matrix so as to decide correctness of both the learned lower authorities' respective findings making various disallowances/additions in the course of assessment dated 20.11.2019, as upheld in the learned CIT(A)/NFAC's lower appellate discussion, is concerned. This is for the precise reason that the learned CIT(A)/NFAC had issued the corresponding herein notice to the assessee for 29.03.2024 whereas the lower appellate order stands uploaded; after final adjudication, on the same day itself at "13:27:16" hours. Learned counsel submits in this clinching backdrop that the assessee could not upload its written submissions before the learned CIT(A)/NFAC which has resulted in serious prejudice to its cause of action.

5. The Revenue could hardly dispute all these clinching facts emanating from the case file as well as page 43 in assessee's paper book. Faced with this situation, we are of the

considered view that the assessee's non appearance in the lower appellate proceedings is neither intentional nor deliberate but on account of communication gap only. We accordingly deem it appropriate in the larger interest of justice that the learned CIT(A)/NFAC needs to reexamine the assessee's substantive grounds raised herein for its afresh appropriate adjudication u/s 250(b) of the Act subject to a rider that it shall be tax payer's risk and responsibility only to plead and prove all the relevant facts in consequential proceedings within three effective opportunities of hearing. Ordered accordingly.

6. This assessee's appeal is allowed for statistical purposes in above terms.

Order pronounced in the open court on 24.07.2024.

**Sd/-
(OMKARESHWAR CHIDARA)
ACCOUNTANT MEMBER**

**Sd/-
(SATBEER SINGH GODARA)
JUDICIAL MEMBER**

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.