

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH MUMBAI

**BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No. 3022/MUM/2024
Assessment Year: 2010-11**

Ashwin General Merchants Pvt. Ltd., 7, Amar CHS Ltd., 8 th Road, TPS III, Khar (W), Mumbai – 400052 (PAN : AACCA9500A)	Vs.	Income Tax Officer, Ward – 6(1)(3), Mumbai
(Appellant)		(Respondent)

Present for:

Assessee : Shri Prakash Jhunjunwala, CA
Revenue : Shri Manoj Kumar Sinha, Sr.DR

Date of Hearing : 29.07.2024
Date of Pronouncement : 30.07.2024

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi, vide order no. ITBA/NFAC/S/250/2023-24/1063690801(1), dated 30.03.2024 passed against the assessment order by the Income Tax Officer, Ward-6(1)(3), Mumbai, u/s. 147 r.w.s. 144 of the Income-tax Act(hereinafter referred to as the "Act"), dated 30.12.2017 for Assessment Year 2010-11.

2. Grounds taken by the assessee are reproduced as under:

“1.0 On facts and circumstances of the case and in law, Ld. CIT(A) erred in passing the appeal order ex parte without allowing adequate opportunity of being heard and ought to have considered the bonafide reasons which had precluded the appellant to participate in the appeal proceeding;

2.0 On facts and circumstances of the case and in law, Ld. CIT(A) erred in confirming the entire additions made in assessment, without deciding the case on merits;

3.0 On facts and circumstances of the case and in law, Ld. CIT(A) ought to have held the notice u/s 148 and consequential re-assessment order u/s. 147 as bad- in-law, since had been issued in absence of tangible material and without independent application of mind and without having reason to believe of escapement of income;

4.0 On facts and circumstances of the case and in law, Ld. CIT(A) ought to have deleted the addition made u/s.68 of the sum received from M/s JMD Sounds Ltd of Rs.5,00,000/-;

5.0 On facts and circumstances of the case and in law, Ld. CIT(A) ought to have deleted the addition u/s 69C of alleged commission paid of Rs. 10,000/- @ 2% of Rs.5,00,000/-;

6.0 On facts and circumstances of the case and in law, Ld. CIT(A) ought to have deleted the addition made u/s 68 of Unsecured loans received from 8 lenders of Rs.3,46,30,959/-;

7.0 The Ld. CIT-(A), before confirming the addition of Sec.68 of unsecured loan of Rs. 3,46,30,959/-, ought to have considered the understated vital facts being;

a) The complete identity, genuineness and creditworthiness of lenders are supported with PAN/AO details, Ledger a/c, confirmation of loan, own bank statement and bank statement of the lender filed on record;

b) The entire loans has been received through proper banking channels;

c) The amendment to 1st Proviso to Sec.68 applies from A.Y. 2022-23 onwards and would not apply for impugned year;

d) The copies of alleged contrary material/statements has not been provided to the appellant for rebuttal and also an opportunity of cross examination has not been allowed.”

3. Vide ground no.1, assessee has contested the *ex parte* order passed by the ld. CIT(A), without giving adequate opportunity of being heard. In this respect, we perused the order of the ld. CIT(A) to note that it has been passed *ex parte* since assessee did not respond to multiple opportunities provided by the ld. CIT(A).

4. Before us, ld. Counsel for the assessee submitted that it had sought an adjournment by filing an application on 25.01.2024 which has not been considered. The appeal was disposed by passing an order on 30.03.2024.

5. Brief facts of the case are that assessee filed its return of income on 26.09.2010 reporting total income at Rs.75,600/-. Case of the assessee was selected for re-assessment u/s. 147 whereby ld. Assessing Officer made additions of Rs.3,51,40,959/- which included unexplained cash credit u/s.68 and unexplained expenditure u/s.69C of Rs.10,000/-. The said assessment was completed u/s. 144 r.w.s. 147 of the Act vide order dated 30.12.2017. Aggrieved, assessee went in appeal before the ld. CIT(A).

6. While adjudicating upon the matter, ld. CIT(A) issued notice for hearing dated 18.01.2024 fixing the date of hearing on 25.01.2024. Against this notice, assessee had filed an application seeking adjournment. This is the only date of hearing which was fixed by the ld. CIT(A) for the disposal of the appeal.

7. Under the given set of facts, we find it appropriate to remit the matter back to the file of Ld. CIT(A), since adequate opportunity of hearing has not been given to the assessee to represent its case.

7.1. Section 250 of the Act provides for procedure to be adopted while disposing of the appeal by the Ld. CIT(A). Sub-section (4) of section 250 of the Act provides that the Ld. CIT(A) may, before disposing of any appeal, make such further inquiry as he thinks fit, or may direct the Assessing officer to make further inquiry and report the result of the same to the Commissioner (Appeals). Further, sub-section (6) provides that the CIT(A) shall pass an order in writing and shall set the points for determination, the decision thereon and the reasons for the decision. Keeping in mind the provision of sections 250 of the Act, it is incumbent upon the Ld. CIT(A) to pass a speaking order on the merits of the case by examining, verifying and analyzing the material on record.

7.2. Considering the submissions made before us, in the interest of justice and fair play, we find it appropriate to remit the matter back to the file of Ld. CIT(A) for *denovo* meritorious adjudication on the grounds of the appeal taken at the first appellate stage. We also direct the assessee to be diligent and cooperative in attending the hearings and make its submissions for expeditious and effective disposal of the appeal. It should not seek adjournments unless warranted by compelling reasons.

7.3. Since the matter is restored to the file of Ld. CIT(A) for meritorious adjudication by passing a speaking order in terms of our observations made hereinabove, we are not expressing any views on the merits of the case so as to limit the appellate procedure before the Ld. CIT(A). The observations herein made by us in remanding the matter back to the file of Ld. CIT(A) will not impair or injure the case of

the Revenue nor will it cause any prejudice to the defense/explanation of the assessee.

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

Order is pronounced in the open court on 30 July, 2024

Sd/-
(Pavan Kumar Gadale)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 30 July, 2024

MP, Sr.P.S.

Copy to :

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

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai