

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH MUMBAI

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

**ITA No. 834/MUM/2024
Assessment Year: 2013-14**

Apeekay Construction Pvt. Ltd., 8, Dharmeshwar, T H Kataria Marg, Matunga (West), Mumbai – 400 016 (PAN : AADCA7224Q)	Vs.	Income Tax Officer, Ward – 6(1)(1), Mumbai
(Appellant)		(Respondent)

Present for:

Assessee : Shri Abhay N. Agarwal, Advocate
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/250/2023-24/1059449712(1), dated 08.01.2024 passed against the assessment order by the Income Tax Officer, 6(1)(2), Mumbai, u/s. 143(3) r.w.s 147 of the Income-tax Act (hereinafter referred to as the "Act"), dated 23.12.2019 for Assessment Year 2013-14.

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

“1) The learned A.O. erred in adding of Rs.3,00,00,000 u/s 68, disallowance of Rs.4,56,067 u/s 37 of the Income Tax Act, 1961.

2) Your petitioner craves leave to add, alter, amend and/or withdraw any/or all the above grounds of appeal.”

3. Learned Counsel for the assessee virtually appearing before us prayed for restoration of the matter back to the file of ld. CIT(A), since the first appellate order has been passed *ex-parte*. In this respect it was submitted that notices could not be received by the assessee which were sent on the email ID not regularly used. From the perusal of the order of the ld. CIT(A), it is noted that four notices were issued to the assessee fixing the dates for hearing, however, non were availed. Since the assessee failed to avail the opportunity to furnish document in support of the grounds of appeal, the appeal of the assessee was dismissed.

3.1. From the perusal of the order of the assessment, we note that assessee did not file its return of income u/s. 139 of the Act which led to initiation of proceedings u/s.147 for which notice u/s. 148 was issued on 26.03.2019. In response to the said notice, assessee filed its return of income on 25.04.2019, reporting total income at Rs.1,06,510/-. Statutory notices were issues and served on the assessee calling for various details in respect of claims made by it in its return, more particularly relating to reasons recorded for issuing notice u/s. 148 of the Act. In para 3.7 and in para 3.9, ld. Assessing Officer has taken note of various notices issued to the assessee which remained un-complied. He thus, proceeded to complete the assessment by making disallowance of expenditure of Rs.4,56,067/-

and addition of Rs.3 Crores u/s.68 of the Act. Assessee went in appeal before the ld. CIT(A), but before him also did not make any compliance.

4. Before us, ld. Counsel raised an additional ground contending legal issue. Since the ld. Counsel prayed for remitting back the matter to the file of ld. CIT(A), he did not press the additional ground and withdrew it for its admission.

5. Ld. Sr. DR objected on the prayer made by the ld. Counsel and placed reliance on the orders of the authorities below.

6. Heard both the parties. Perused the material on record.

7. From the perusal of the impugned assessment order, we note that there are partial compliances made by the assessee on the queries raised by the ld. Assessing Officer. Before the ld. CIT(A), assessee could not comply owing to issues relating to the email ID. Further, it is noticed that out of the four notices issued by the ld. CIT(A), last three notices have been issued within the same month, i.e., on 08.12.2023, 18.12.2023 and 27.12.2023 which effectively did not give sufficient time to the assessee to respond and comply with the same. Considering the facts on record and 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.

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