

IN THE INCOME TAX APPELLATE TRIBUNAL,
"G" BENCH MUMBAI
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER

ITA No.743/MUM/2024
(A.Y.2012-13)

Gold Finger EST Private Ltd. A Wing, 603 Malkani Tower, Bandivali Hill Road, Jogeshwari (West), Maharashtra -400102.	Vs.	ITO – 9(3)(4), Aayakar Bhavan, M.K. Road, Mumbai-400020.
PAN/GIR No.AAECG1363M		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

Assessee by	Shri Vimal Punmiya.AR
Revenue by	Shri Prashant Mahajan.Sr.DR

सुनवाई की तारीख/Date of Hearing	01.07.2024
घोषणा की तारीख/Date of Pronouncement	03.07.2024

ORDER

PER PAVAN KUMAR GADALE, JM:

The assessee has filed the appeal against the order of the National Faceless Appeal Centre(NFAC) Delhi/CIT(A) passed u/sec 143(3) r.w.s 147 and u/sec 250 of the Act.

The assessee has raised the following grounds of appeal:

- 1. On the facts and circumstances of the case and in law the Ld CIT(A) erred in initiating the reassessment proceeding under section 147 rws 143(3) and failed to consider that reassessment proceeding cannot be initiated. No reassessment can be made just to make an enquiry or*

verification. Reassessment proceeding cannot be initiate merely on the information Received from investigation wing Reassessment proceeding cannot be initiated when the Ld CIT(A) have reason to suspect and not reason to believe. On the facts and circumstances of the case and in law the Ld CIT(A) has issued the notice under section 148 before recording the reasons for reopening which is bad in law and void ab initio.

2. On the facts and circumstances of case and in law the Ld CIT(A) erred in passing the assessment order without mentioning any date on the order under section 143 sub section 3 r ws 147 of income tax Act which is passed against the principal of natural justice.

3. On the facts and circumstances of the case and law the Ld CIT(A) erred in disallowing and added Rs 2459880 on account of suppression of receipts at the rate of gross profit 14.57 percent of the difference in contractual receipts as per accounts and contractual receipts as per Form 26AS of Rs16883184 under section 28 of the Income Tax Act.

4. On the facts and circumstances of the case and in law the Ld CIT(A) erred in considering Rs 14423304 thereby treating it as unexplained expenditure under section 69C of the Income Tax Act 1961.

5. The Ld CIT(A) erred in charging the interest under section 234A 234B and 234D of the Income Tax Act 1961

6. The Ld AO erred in initiating Penalty proceeding under section 274 rws 271 1 c of the Income Tax Act 1961

7. The appellant craves leave to add further grounds or to amend or alter the existing grounds of appeal on or before the date of hearing.

2. The brief facts of the case are that, the assessee company is engaged in the business of fixing of marbles

and granite stones, civil construction and related activities. The assessee has filed the return of income for the A.Y 2012-13 on 28.09.2012 disclosing a total income of Rs.10,32,641/- and the return of income was processed u/s 143(1) of the Act. Subsequently the Assessing Officer (AO) has received information that the assessee has received interest on fixed deposit of Rs. 1,66,050/- from Bombay Mercantile Co. Op Bank Ltd, professional fees of Rs. 27,62,949/-, contract receipts of Rs. 7,44,60,554/- and the investments made by the assessee of Rs. 96,04,250/- and cash deposits in the Bombay Mercantile Co. Op Bank Ltd and were not properly reflected in the financial statements. The AO has reason to believe that he income has escaped assessment and issued notice u/sec 148 of the Act. In compliance to the notice, the assessee has filed the return of income on 22.5.2019 disclosing a total income of Rs.10,32,641/- and the AO has issued notice u/s 143(2) and 142(1) of the Act. Whereas on perusal of the receipts/sales disclosed by the assessee and the contractual receipts as per Form no.26AS, the AO found that the assessee has disclosed the contract receipts of Rs.6,03,40,319/- and whereas form .no. 26AS discloses an amount of Rs. 7,72,23,503 /- and there is a difference of Rs.1,68,83,184/-. Hence the AO has issued notice u/sec 142(1) of the Act to reconcile the contract receipts. Whereas the assessee has submitted the information but there are discrepancies with respect to contract amounts

of the three parties were identified. Since the Assessee has not filed the confirmation letters, the A.O considered the Gross Profit (GP) rate based on the financial statements @ 14.57% on the differential amount of Rs. 1,68,83,184/- which worked out to Rs.24,59,880/- as income of the assessee and similarly made addition of Rs.1,44,23,304/- as unexplained expenditure u/sec 69C of the Act and assessed the total income of Rs. 1,79,15,830/- and passed the order u/sec143(3) r.w.s147 of the Act dated13-12-2019.

3. Aggrieved by the order, the assessee has filed an appeal before the CIT(A), whereas the CIT(A) has considered the grounds of appeal, statement of facts and findings of the AO and has issued notices of hearing and since there was no compliance by the assessee to notices. Therefore the CIT(A) considering the information on record has confirmed the action of the A.O and dismissed the appeal. Aggrieved by the order of the CIT(A), the assessee has filed an appeal before the Hon'ble Tribunal.

4. At the time of hearing, the Ld.AR submitted that the CIT(A) has erred in confirming the action of the Assessing officer overlooking the information/details of the assessment proceedings. Further the assessee has a good case on merits and shall substantiate with the material evidences on the offering of differential contract receipts in the subsequent assessment year and prayed for an

opportunity to explain before the lower authorities. Per Contra, the Ld.DR supported the order of the CIT(A).

5. We heard the rival submissions and perused the material on record. Prima-facie the CIT(A) has passed the order considering the fact that there is no compliance nor appearance in spite of providing adequate opportunity of hearing and the notices were issued. Therefore, the CIT(A) was of the opinion that the assessee is not interested in prosecuting the appeal and dismissed the appeal ex-parte confirming the action of the assessing officer. The Ld. CIT(A) has issued the notices of hearing on 19.02.2021, 10.03.2022, 04.11.2022, 03.08.2023 & 19.12.2023 referred at Page 3 Para 3 of the order but there was no response and thus the Ld.CIT(A) came to a conclusion that the assessee is not interested and decided the appeal based on the information available on record. Whereas the assessee has raised grounds of appeal challenging the additions made by the A.O and there could be various reasons for non appearance which cannot be overruled. Therefore, considering the facts and principles of natural justice, we shall provide with one more opportunity of hearing to the assessee to substantiate the case with evidences and information. Accordingly, set aside the order of the CIT(A) and remit the entire disputed issues to the file of the CIT(A) to adjudicate afresh and the assessee should be provided adequate opportunity of hearing and

shall cooperate in submitting the information for early disposal of the Appeal. Accordingly, we allow the grounds of appeal of the assessee for statistical purposes.

6. In the result, the appeal filed by assessee is allowed for statistical purposes. Sd/-

Order pronounced in the open court on 03.07.2024.

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated: 03/07/2024

KRK

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,
(Dy./Asstt.Registrar)ITAT,
Mumbai