

IN THE INCOME TAX APPELLATE TRIBUNAL, "E" BENCH
MUMBAI
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &
SMT RENU JAUHRI, ACCOUNTANT MEMBER

ITA No.1548/MUM/2024
(A.Y.2012-13)

Three M Paper Boards Limited, A33/34, Royal Industrial Estate, 5-BNaigaonCrossRoad, Wadala, Mumbai-400031.	Vs.	Dy. Commissioner of Income Tax-2(3)(1), Room no. AB-615, Ayakar Bhavan, M.K. Road, Mumbai-400020.
PAN/GIR No. AA ACT1650J		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

Assessee by	Shri.Devendra Jain.AR
Revenue by	Shri.P.D.Choughule Sr.DR

सुनवाई की तारीख/Date of Hearing	24.06.2024
घोषणा की तारीख/Date of Pronouncement	26.06.2024

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) and u/sec 250 of the Act. The assessee has raised the following grounds of appeal:

"1. In the facts and circumstances of the case and in law, the Learned National Faceless Appeal Centre (NFAC), CIT (Appeals) has erred in passing an ex-parte order dated 08/02/2024

under section 250 without considering the submissions filed by the appellant thereby violating the principles of Natural Justice.

2. In the facts and circumstances of the case and in law, the Learned CIT(A) has erred in confirming the addition of Rs. 6,20,05,611/-on account of alleged bogus purchases merely on surmises and conjectures.

3. The appellant craves leave to add, alter, delete or modify all or any of the above grounds of appeal. All the above grounds are without prejudice to each other.”

2. The brief facts of the case that, the assessee company is engaged in the business of generating of power & energy, manufacturing of duplex board and packing boxes. The assessee has filed the return of income for the A.Y 2012-13 on 30.09.2012 disclosing a total income of Rs. 4,55,44,140/- under normal provisions of the Act and the Book profit of Rs. 5,19,57,425/- computed under section 115JB of the Act and the return of income was processed u/sec 143(1) of the Act. Subsequently the case was selected for scrutiny and notice u/sec 143(2) and u/sec 142(1) of the Act along with questionnaire are issued. In compliance to the notice, the Ld. AR of the assessee appeared from time to time and submitted the details. The Assessing Officer(AO) on perusal of the information and the financial statements found that the assessee has made purchases from the nine parties and was asked to produce the supporting evidences of purchases made in F.Y.2011-12 aggregating to Rs. 13,24,78,597/-. Whereas the A,O based on the information submitted by the assessee and further to test check the genuineness of the purchase transactions has issued notice u/sec 133(6) of the Act on

the parties. Whereas on verification, the A.O found that five parties have replied but there was shortfall of confirmation of balances by the creditors and in respect of remaining suppliers, no reply was received. The A.O considering the partial compliance by the creditors has issued show cause notice to the assessee to prove the genuineness and creditworthiness of the parties. The assessee has replied to the show cause notice with the additional information. Finally, the AO dealt on the facts and information at Para 3.2 of the order and was not satisfied with the explanations of the assessee and observed that the genuineness of the transactions could not be established and made disallowance of alleged bogus purchases of Rs6,20,05,611/- and assessed the total income of Rs. 10,75,49,750/- and passed the order u/sec 143(3) of the Act dated 31.03.2015.

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 proper 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 and submissions of the assessee in the assessment proceedings. The CIT(A) has not considered the written submissions, the remand report and the assessee comments/submissions on the remand report which play vital role in the decision making of the Appeal. Further the assessee has a good case on merits and shall substantiate with the material evidences 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 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 18.02.2021, 08.02.2022, 22.03.2023, 19.01.2024 & 01.02.2024 referred at Page 6 Para 5 of the order but only once the assessee has sought adjournment. The 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 addition of unapproved purchases by the Assessing Officer and there could be various reasons for non appearance/compliance 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.

Order pronounced in the open court on .06.2024.

(RENU JAUHRI)
ACCOUNTANT MEMBER

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated: /06/2024

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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.

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