

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ " सी", अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
" C " BENCH, AHMEDABAD

श्री सिद्धार्थ नौटियाल, न्यायिक सदस्य एवं
श्री मकरंद वसंत महादेवकर, लेखा सदस्य के समक्ष।

BEFORE SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER
AND
SHRI MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER

आयकर अपील सं/ITA No.616/Ahd/2023
निर्धारण वर्ष /Assessment Year : 2016-17

Metro Heritage Pvt.Ltd. 30-A Vishwas Colony Beside Kesha Hospital Alkapuri Vadodara - 390 007	बनाम/ v/s.	The Dy.CIT Circle-2(1)(2) Vadodara
स्थायी लेखा सं./PAN: AAECM 2161 M		
(अपीलार्थी/ Appellant)	(प्रत्यर्थी/ Respondent)
Assessee by :	Shri Hemant Suthar, AR	
Revenue by :	Shri Ashok Kumar Suthar, Sr.DR	

सुनवाई की तारीख/Date of Hearing : 29/07/2024
घोषणा की तारीख /Date of Pronouncement: 01/08/2024

आदेश/ORDER

PER SHRI MAKARAND V. MAHADEOKAR, AM:

This appeal is filed by the Assessee as against the order dated 21/06/2023 passed by the Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as "the Ld.CIT(A)" in short] arising out of the assessment order dated 19/12/2018 passed by the Assessing Officer (AO) under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") relevant to the Assessment Year (AY) 2016-17.

Facts of the case:

2. The assessee-company filed its return of income for the A.Y. 2016-17 on 13-10-2016 declaring total income of Rs.17,97,090/-. The case was selected for the scrutiny under CASS. Notices under sections 143(2) and 142(1) of the Act were issued to the assessee but the assessee failed to furnish the details as required. Hence, the AO also issued a show cause notice to the assessee stating that why penalty u/s 271(1)(b) of the Act shall be levied for non-compliance. On failure to comply with the notice, an order of penalty u/s. 271(1)(b) of the Act was also passed by the AO. The AO observed that the assessee had submitted the details called for through online facility provided under E-proceedings. During the course of assessment proceedings, the AO observed that the assessee has not disclosed interest income of Rs.5,47,553/-. The AO asked to furnish the details to justify the claim of depreciation of Rs.26,96,496/- with proper evidence. As the assessee failed to furnish the details as asked for, the AO added interest of Rs.5,47,553/- under the head "income from other sources" and Rs.26,96,495/- as disallowance of depreciation. Additionally, the AO also asked the assessee to furnish the details of large share premium received during the year under consideration along with the detailed calculations u/s Rule 11U and 11UA and confirmations from each party. In response to which the assessee submitted that the shares were issued with premium as per the fair market value of equity shares calculated on the basis of last audited balance-sheet of the company as on 31-03-2014 which came to Rs.108.99 (approx. Rs.110 per share) and, therefore, the shares were issued at Rs.110/- per share. The AO concluded that the assessee has not calculated the value as per Rule 11UA of the I.T. Rules, 1962 and calculated

the value in accordance with the Rule 11UA of the I.T. Rules which came to Rs.98.31 per share. The AO added Rs.12,85,900/- being the difference between value as determined by him i.e. Rs.98.31 and value at which company allotted the shares i.e. Rs.110/- per share to the total income of the assessee. Thus, the AO completed the assessment by passing order u/s. 143(3) of the Act, after giving multiple opportunities of being heard.

3. The assessee preferred an appeal before the Ld.CIT(A) on the grounds on which additions were made. The Ld.CIT(A) dismissed all the grounds of assessee and confirmed the addition on the basis of order of AO stating that the assessee remained non-compliant, and assessee failed to produce necessary evidence.

4. Aggrieved by the order of the Ld.CIT(A), the assessee in appeal before us with following grounds of appeal:

"1. The Ld. CIT (Appeals), National Faceless Appeal Centre (NFAC) has erred in law and in facts in dismissing the appeal ex-parte without considering the request for the adjournment and without affording reasonable opportunity of being heard and for want of prosecution. The appeal of the appellant may kindly be restored to the file of the Ld. CIT (Appeals), NFAC, and may please be directed to afford reasonable opportunity of being heard.

2. The Ld. CIT (Appeals), NFAC even in deciding the appeal and dismissing it ex-parte ought to have dealt with the merits of the issues involved and decided the appeal on merits by a speaking order observing the principles of natural justice. The order has been passed hurriedly and hence, the order of the Ld. CIT (Appeals), NFAC may please be set aside.

3. Without prejudice to the above grounds:

a. The Ld. CIT(Appeals), NFAC has erred in confirming the addition made by the Ld. A.O of Rs. 5,47,553/- being interest income contending that the same is not offered for taxation ignoring the fact that the said income has already been considered under the head Profits and Gains from Business

and Profession and offered the same for taxation in the return of income. The impugned addition of Rs. 5,47,553/-being against the provisions of law and applicable facts is prayed to be deleted.

b. The Ld. CIT(Appeals), NFAC has erred in confirming the disallowance made by the Ld. A.O of Rs. 26,96,495/- being the depreciation on the assets purchased during the year under consideration on the contention that the appellant was not able to justify the additions made to the fixed assets by submitting the bills etc. The impugned disallowance of Rs. 26,96,495/- being bad in law and in facts is prayed to be allowed as claimed.

c. The Ld. CIT(Appeals), NFAC has erred in confirming the addition made by the Ld. A.O of Rs. 12,85,900/- being the amount of share premium on being the appellant company did not calculate the share value as per Rule 11UA of the IT Rule, 1962. The said addition is invalid and it is sincerely prayed to be deleted.

4. Your appellant craves liberty to add, alter, amend, substitute or withdraw any of the ground(s) of appeal hereinabove contended."

5. The Ld.Authorised Representative (AR) for the assessee stated that due to CORONA pandemic situation prevailed all over India, there were lot of disruptions in the day to day activities owing to which the first notice of the Ld.CIT(A) dated 23-12-2020 could not be complied with and subsequently due to devastating fire in the hotel building, the records maintained in the office of the assessee were wither destroyed or misplaced. He also stated that during F.Y. 2020-21 the consultant who was handling accounting and taxation work also left the work which deteriorated the record keeping of the company. Because of these reasons, the assessee could not comply with the notices of the Ld.CIT(A).

5.1. The Ld.AR filed an affidavit stating these facts and requested to restore the matter back to the Ld.CIT(A) as no proper opportunity of being heard was offered to the assessee even after seeking adjournment.

6. The Ld.Departmental Representative (DR), considering the facts, did not object to the request of the Ld.AR.

7. We have heard the rival parties, perused the material available on record. We have also noted that the Ld.AR filed an affidavit stating these facts and requested that the matter may be restored to the file of the Ld.CIT(A) as no proper opportunity for being heard was provided, despite seeking adjournments. We also noted that the Ld.AR has filed a paper-book containing many documents in support of his claim which need proper verification.

7.1. Upon careful consideration of the facts and the submissions made by the Ld.AR, it is observed that the assessee faced unprecedented disruptions due to the pandemic and the fire incident, significantly impacting its ability to comply with the Ld.CIT(A)'s proceedings. Furthermore, the Ld.CIT(A) appears not to have granted a fair opportunity for the assessee to present its case fully.

7.2. Given the assessee's Affidavit and the paper-book containing supporting documents, it is evident that a proper verification of the evidence is necessary to ensure a fair adjudication of the matter. In the interest of justice, we deem it appropriate, without going into the merit of the case, to set aside the order of the Ld.CIT(A) and restore the matter to his file for fresh adjudication. The Ld.CIT(A) is directed to provide the assessee with an adequate opportunity to present all necessary evidences and explanations. The assessee is also directed to co-operate with the

proceedings before the Ld.CIT(A) to ensure a timely resolution of the matter.

8. In result the appeal of the Assessee is treated as allowed for statistical purposes.

Order pronounced in the Open Court on 1 Aug, 2024 at Ahmedabad.

**Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER**

**Sd/-
(MAKARAND V. MAHADEOKAR)
ACCOUNTANT MEMBER**

अहमदाबाद/Ahmedabad, दिनांक/Dated 01/08/2024

टी.सी.नायर, व.नि.स./T.C. NAIR, Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-(NFAC), Delhi
5. विभागीय प्रतिनिधि,आयकर अपीलीय अधिकरण ,राजकोट/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, ITAT, Ahmedabad