

IN THE INCOME TAX APPELLATE TRIBUNAL ‘F’ BENCH, MUMBAI
BEFORE SHRI B R BASKARAN, AM AND MS. KAVITHA RAJAGOPAL, JM

ITA No. 290/Mum/2024
(Assessment Year: 2015-16)

Shahshimangal Holdings Pvt. Ltd. 3 rd Floor, Meher House 15, Cawasji Patel Street, Fort, Mumbai-400 001	Vs.	Asst. CIT, Circle – 2(3)(3) Mumbai
PAN/GIR No. AACCS 2160 C		
(Assessee)	:	(Respondent)
Assessee by	:	None
Respondent by	:	Ms. Rajeshwari Menon
Date of Hearing	:	09.05.2024
Date of Pronouncement	:	05.08.2024

ORDER

Per Kavitha Rajagopal, J M:

This appeal has been filed by the assessee, challenging the *ex parte* order of the learned Commissioner of Income Tax (Appeals) ('ld.CIT(A) for short), National Faceless Appeal Centre ('NFAC' for short) passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2015-16.

2. As there was no representation on behalf of the assessee, we hereby dispose of this appeal by hearing the learned Departmental Representative ('ld.DR' for short) and on perusal of the materials available on record.

3. The assessee has challenged the *ex parte* order of the ld. CIT(A) on the following grounds:

1. *The Commissioner of Income-tax (Appeals) at National Faceless Appeal Centre, Delhi (hereinafter referred to as the CIT(A)) erred in upholding the action of Assistant Commissioner of Income-tax, Circle 2(3)(2), Mumbai (hereinafter referred to as the Assessing Officer) in not accepting the indexed cost of improvement to the tune of Rs.79,96,283 on the ground that the appellants have claimed depreciation on the cost of improvement, and also have failed to furnish the details of such cost of improvement for various years. The appellants contend that on the facts*

and in the circumstances of the case and in law, the CIT(A) ought not to have upheld the action of the Assessing Officer inasmuch as he has not appreciated the facts of the case in its entirety and hence, the impugned addition made by the Assessing Officer is required to be deleted.

2. *The CIT(A) erred in upholding the action of the Assessing Officer in not allowing credit for advance tax and tax deducted at source aggregating Rs.17,88,946 of the amalgamating companies, i.e. Perfect Engineering Export International Private Limited and Tate Engineering India Private Limited, on the ground that credit has been allowed to the amalgamating companies. The appellants contend that on the facts and in the circumstances of the case and in law, the CIT(A) ought not to have upheld the action of the Assessing Officer inasmuch as he has not appreciated the facts of the case in its entirety inasmuch as the appellants have declared their total income on the basis of consolidated profit and loss of the amalgamated entities and hence, ought to have allowed credit for advance tax and tax deducted at source aggregating Rs 17,88,946 of the amalgamating companies.*

4. The brief facts are that the assessee company is engaged in the business of Financial Service Sector and had e-filed its return of income on 30.09.2015, declaring total income at Rs.Nil. The return was processed u/s. 143(1) of the Act and the assessee revised its return of income on 23.09.2016, declaring total income at Rs.66,17,072/-. The assessee's case was then selected for scrutiny under CASS and notices u/s. 143(2) and 142(1) were issued and duly served upon the assessee.

5. The Id. Assessing Officer ('A.O.' for short) passed the assessment order u/s. 143(3) of the Act on 19.12.2017, thereby determining the total income at Rs.1,48,01,760/-, by making various additions/disallowances.

6. Aggrieved, the assessee was in appeal before the first appellate authority, challenging the assessment order.

7. The Id. CIT(A) vide order dated 19.12.2017, upheld the order of the Id.A.O. for the reason that inspite of several opportunity the assessee has failed to substantiate its claim and has been non compliant throughout the appellate proceedings.

8. The assessee is in appeal before us, challenging the impugned order of the Id. CIT(A).

9. We have heard the Id. DR and perused the materials available on record. It is observed that the assessee has challenged the disallowance towards the claim of indexed cost of improvement for computing long term capital gain (LTCG for short) on sale of land and structures annexed thereto amounting to Rs.79,96,283/- along with the non granting of TDS credit of Rs.17,88,946/- of the amalgamating company. As the Id. CIT(A) has not decided the issues on the merits of the case, we deem it fit to restore this back to the file of the Id. CIT(A) by extending one more opportunity to the assessee to present its case before the first appellate authority, by adhering to the principles of natural justice. We, therefore, remand all these issues back to the file of the Id. CIT(A) for *de novo* adjudication. The assessee is directed to comply with the proceedings without any undue delay on its side.

10. In the result, the appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court on 05.08.2024

Sd/-

Sd/-

(B R Baskaran)

(Kavitha Rajagopal)

Accountant Member

Judicial Member

Mumbai; Dated : 05.08.2024

Roshani, Sr. PS

Copy of the Order forwarded to :

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

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai