

IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, MUMBAI

BEFORE SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER &
SMT. RENU JAUHRI, ACCOUNTANT MEMBER

ITA No.2265/Mum./2024
(Assessment Year : 2013-14)

M/s. Divnova Specialities Pvt.Ltd.,

T3A, Phoenix House, 5th Floor, 462
Senapati Bapat Marg, Lower Parel,
Mumbai-400013.

PAN -AABCD8262D

.....Appellant

v/s

ITO,

Ward-6(2)(3),
Mumbai-400020.

..... Respondent

Assessee by : Shri Vimal Punmiya

Revenue by : Shri R.R.Makwana, Sr.DR

Date of Hearing - 06/08/2024

Date of Order - 08/08/2024

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 01/03/2024 passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Addl./Joint Commissioner of Income Tax (Appeals)-1, Noida, [*learned Addl./Joint CIT(A)*], for the assessment year 2013-14.

2. In this appeal, the assessee has raised the following grounds:-

"The appellant has preferred an appeal against the order dated 01.03.2024 passed by Id. CIT (A) u/s. 250 of the Income Tax Act 1961, in pursuance of

appeal filed against assessment order dated 30.03.2016 passed u/s. 143(3) of the Income Tax Act, Following are the grounds of appeal without prejudice to one another:-

- 1. The learned Commissioner of Income Tax (Appeal) failed to note that the learned Assessing Officer merely relied on the information received from DGIT (Investigations), Mumbai to reopen the assessment and neither the assessment order nor the reasons communicated indicate that the Assessing officer had applied his mind to the issue and therefore the entire reassessment proceedings are invalid, without jurisdiction, has no legs to stand and hence must be quashed.*
 - II. On the facts and in the circumstances of the case, The learned Commissioner of Income Tax (Appeal) has erred in an addition of Rs. 1,16,713/- on account of interest paid on borrowed fund/Short Term Loans considered now as unexplained cash credit u/s. 68 taken from loaner i.e. Duke Business Pvt. Ltd based on information received from investigation.*
 - III. On the facts and in the circumstances of the case, The learned Commissioner of Income Tax (Appeal) has erred in confirming the genuine rent expenses paid amounting to Rs. 24,00,000/- without any base and without considering the submission/ documentary evidence provided to prove the genuineness of the transaction.*
 - IV. The Learned Commissioner of Income Tax (Appeal) erred in ignoring the Fact that it is mandatory for the Assessing Officer to confront the appellant with any material collected by the Assessing Officer at the back of the appellant, and in case of statement of third party recorded at the back of the appellant, opportunity of cross examination has to be offered to the assessee, failing which the said material/statement etc. will be rendered unreliable and additions made on the basis of such material/statement etc. shall be rendered illegal, thus violating the principles of natural justice and on this ground alone, the entire assessment must be quashed.*
 - V. The appellant craves to add, amend or alter the grounds of appeal at the time of or before the hearing of appeal."*
3. During the hearing, the learned Authorised Representative ("learned AR") at the outset submitted that during the physical hearings before the learned CIT(A), the assessee filed its submissions, however, the learned Addl./Joint CIT(A) without considering the same dismissed the appeal filed by the assessee and upheld the addition made by the AO. We find that the

assessee filed its appeal before the learned CIT(A) on 04/06/2016, i.e. prior to the initiation of Faceless Appeal process. From the perusal of the paper book filed by the assessee, we further find that the assessee filed various submissions alongwith the supporting documentary evidences in support of its claim. However, we find that after transition of appeal to the Faceless Appeal process, the learned Addl./Joint CIT(A) vide impugned order dated 01/03/2024 dismissed the appeal filed by the assessee ex-parte without considering any of the submissions/evidence filed by the assessee. From the perusal of the impugned order, we further find that notices issued by the learned Addl./Joint CIT(A) on 13/09/2019, 09/02/2021, 07/02/2024, and 26/02/2024, could not be responded by the assessee. We further find that the learned Addl./Joint CIT(A) also did not examine the merits of the issue raised by the assessee in its appeal before the learned CIT(A), which is also contrary to the provisions of section 250(6) of the Act.

4. Accordingly, in view of the facts and circumstances as noted in the foregoing paragraph, we deem it appropriate to restore the appeal to the file of the learned CIT(A) for *de novo* adjudication after consideration of the submissions filed by the assessee. Since the matter is restored for consideration afresh, the assessee shall be at liberty to furnish any other submission in support of its claim before the learned CIT(A). Needless to mention no order shall be passed without affording reasonable opportunity of hearing to the parties. Further, the assessee is directed to appear before the learned CIT(A) on all the dates of hearing as may be fixed without any

default. As the matter is being restored to the file of the learned CIT(A) for adjudication on merits, the other grievances raised by the assessee in the present appeal do not call for adjudication at this stage. Accordingly, grounds raised by the assessee are allowed for statistical purposes.

5. In the result, the appeal by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 08/08/2024.

Sd/-

**[RENU JAUHRI]
ACCOUNTANT MEMBER**

MUMBAI, DATED: 08/08/2024

Amit Kumar (Sr. PS on Tour)

Sd/-

**[SANDEEP SINGH KARHAIL]
JUDICIAL MEMBER**

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Mumbai; and
- (5) Guard file.

By Order

Assistant Registrar
ITAT, Mumbai