

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

**BEFORE SHRI BR BASKARAN, ACCOUNTANT MEMBER AND
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A No.2599/Mum/2024
(Assessment Year : 2012-13)**

Industrial Laminates India Private Limited, Survey No.13, Village Aghai Taluka Shahpur, Thane 421 301 PAN: AAACI8004M	vs	The Assistant Commissioner of Income-tax, circle-6(3)(1), Mumbai Room no-506, 5 th floor, Aaykar Bhavan, M.K.Road, Pin-400020
APPELLANT		RESPONDENT

Assessee by : Shri Nishit Gandhi
Respondent by : ShriH.M. Bhatt (SR DR)

Date of hearing : 31/07/2024
Date of pronouncement : 02/ 08/2024

ORDER

PER ANIKESH BANERJEE, J.M:

The instant appeal of the assessee was filed against the order of the National Faceless Appeal Centre, Delhi [for brevity, 'Ld.CIT(A)'] passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), for Assessment Year 2012-13, date of order 15.02.2024. The impugned order was emanated from the order of the Id. Assistant Commissioner of Income-tax 6(3)(1), Mumbai (in short, 'the A.O.') passed under section 143(3) read with section 147 of the Act, date of order 22/11/2019.

2. The assessee has taken the following grounds of appeal:-

“ON NATURAL JUSTICE:

1.1 In the facts and circumstances of the case and in law, the Learned Commissioner of Income Tax (Appeals), National Faceless Appeals Centre [“the CIT(A) for short], erred in passing an ex-parte order u/s 250 of the Income Tax Act, 1961 [“the Act” for short] in gross violation of the principles of Natural Justice and without considering the merits of the case, at all. ’

1.2 While passing the said Order the Ld. CIT(A) failed to appreciate that:

(i) During the pendency of the appeal, a new faceless regime for deciding appeals was introduced by the Government and about which the Appellant was not conversant and therefore no reply could be furnished; .

(ii) The non-submission of reply was purely due to inadvertence and oversight and was not wilful; and;

(iii) The assessment order was also passed u/s 144 of the Act without affording an appropriate opportunity of being heard to the Appellant and therefore it was imperative that the Ld. CIT(A) at least adjudicate the grounds raised by the Appellant

1.3 In the facts and circumstances of the case and in law, the order passed by the Ld. CIT(A) deserves to be quashed.

2. In the facts and circumstances of the case and in law, the Ld. CIT(A) erred in upholding the impugned order passed by the Ld. AO which itself is bad in law and void since the same is not in the prescribed form as per the Income Tax Act and the Rules framed there under.

ON REASSESSMENT:

3. In the facts and circumstances of the case and in law, the Ld. CIT(A) erred in upholding the re-assessment framed by the AO u/s 147 of the Income Tax Act, 1961 without appreciating that the same is bad in law and void since the necessary pre-conditions for the initiation and completion of a re-assessment are not fulfilled in the present case and in any case there is no income escaping assessment in the present case.

ON MERITS:

4.1 In the facts and circumstances of the case and in law, the Ld. CIT(A) erred in confirming the action of the Ld. AO in making the following additions /disallowances in the hands of the Appellant which are contrary to the extant law and based on mere surmises, suspicions and conjectures simply on the 'tf basis of some irrelevant and extraneous considerations:

i. Addition in respect of credits in the bank account of Rs. 4.21 lakhs without appreciating that the same are merely in the nature of bank credits and not income and without deducting therefrom the debits and; ii. Addition of Rs. 1.15 lakhs in respect of addition to fixed assets u/s 69 of the Act without appreciating that the depreciation in respect of the very same assets has been allowed by the AO himself and therefore on this very ground there is no question of doubting the genuineness of the same;

iii. Addition of Rs. 13.68 lakhs in respect of interest income though the same is already subjected to TDS and is also offered to tax in the return of income already furnished.

iv. Addition of Rs. 7.06 lakhs in respect of difference in receipts simply based on the receipts as per 26AS as compared to receipts as per books of accounts without any basis or finding to come to the conclusion that the said income is taxable in the relevant assessment year; and;

v. Making a disallowance of Rs. 61.95 lakhs on account of royalty paid by the Appellant simply on the basis of ITS details without appreciating the facts of the case and the extant law in this regard;

4.2 In the facts and circumstances of the case and in law, all the above additions / disallowances deserve to be deleted since the same are in stark contravention of the law and binding judicial precedents in this regard, simply based on ITS details and not on any concrete material or evidence and hence the same deserves to be deleted.

5. The Appellant craves leave to add, amend, alter, delete or modify all or anythe above grounds at the time of hearing.”

3. The brief facts of the case are that the assessee filed its return of income of assessment year 2012-13 on dated 30.09.2012 declaring an income of Rs. 20,28,450/-. On the basis of information received from the investigation wing of Mumbai that the appellant had made certain high value transactions in its bank account which was not in commensurate with its financials/return of income. The case of the assessee was reopened after recording reasons and obtaining approval from competent authorities. Accordingly, notice u/s 148 of the act was

issued on dated 30.03.2019. Several notices are issued by the Id.AO. However, none of those notices were ever complied with, as the assessee neither attended the proceeding nor filed any written submission. In the course of reassessment proceedings, the Id. AO made the following additions: -

- i. The assessee's bank account was found to be credited by an amount of Rs. 4,21,000/- regarding which the assessee could not produce any explanation. Hence this amount was added to the total income of the assessee.
- ii. It was seen by the Id. AO that the total receipt shown by the assessee in its financials was Rs. 20,28,450/-. Whereas total receipts as per form no. 26 AS was Rs. 27,35,342/-. In absence of any explanation regarding this difference, the amount of Rs. 7,06,892/- was added to the total income of the assessee.
- iii. The Id. AO noted that the assessee had purchased motor vehicle for an amount of Rs. 11,15,085/- for which no explanation was furnished despite opportunities. Therefore, this amount was hailed to be un-explained expenditure u/s 69C of the Act and was added to the total income of the assessee.
- iv. It was noticed by the Id. AO that as per ITS module of departmental system, the assessee had received interest of Rs. 13,67,671/- from Konark Projects Ltd. However, this interest received was not shown by the assessee in its

financials. Accordingly, this amount was added to the income of the assessee.

- v. It was noticed by the Id. AO that as per its module of departmental system, the assessee had paid royalty of Rs. 61,94,594/- during the year under consideration. However, the financials of the assessee did not reflect this payment of royalty. In the absence of any explanation, this amount was added to the income of the assessee, as unexplained expenditure u/s 69C of the Act.

Thus, the income of the assessee was assessed at an amount of Rs. 1,18,33,690/-. Aggrieved assessee filed an appeal before the Id. CIT(A). The appeal order was passed ex parte by rejection of the appeal of the assessee. Being aggrieved on appeal order the assessee filed an appeal before us.

4. The Id.AR explained that the Id. CIT(A) has passed the order without considering the merit of the case. Several notices were issued but all the notices were served in the e-mail of the Chartered Accountant, who was not careful on the appeal issue of the assessee. So, the appeal notices were non-complied. The Id.AR prayed for restoration of the appeal before the Id. CIT(A).

5. The Id.DR in argument placed that in all the stages either in assessment or in appeal proceedings, the assessee has not appeared. The Id.DR argued and fully relied on the order of the revenue authorities.

6. Considering the above statement, we find that the Id. CIT(A) has passed the order without considering the merit of the case. Accordingly, in our considered

view, we remit the matter back to the file of the Id.CIT(A) for considering the appeal afresh. We are not expressing our view on the merit of the case which will impair the set aside appeal proceedings. Needless to say, the assessee should get a reasonable opportunity of hearing in set aside proceedings. On the other hand, the assessee should be diligent and cooperate in appeal proceedings before the Id. CIT(A) for quick disposal of the appeal.

7. In the result, appeal of the assessee **ITA No.2599/Mum/2024** is allowed for statistical purposes.

Order pronounced in the open court on 02nd day of August, 2024.

Sd/-

(BR BASKARAN)
ACCOUNTANT MEMBER
Mumbai, दिनांक/Dated: 02/08/2024
Pavanan

sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्डफाइल/Guard file.

BY ORDER,

//True Copy//

(Asstt. Registrar), ITAT, Mumbai