

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "G", MUMBAI**

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER
AND SHRI RAJ KUMAR CHAUHAN, JUDICIAL MEMBER**

**ITA No.1654/Mum/2024
Assessment Year: 2018-19**

Saranga Anil Aggarwal 7 th Floor, RNA Corporate Park, Kalanagar, Bandra East, Mumbai-400051. PAN: AACPA 8301 L (Appellant)	Vs.	ACIT, Circle-14(1)(1), Mumbai (Respondent)
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Present for:

Assessee by : Shri Dharan Gandhi, Advocate &
Shri Bhadresh Doshi, CA
Revenue by : Dr. Kishor Dhule, CIT/DR

Date of Hearing : 02.07.2024
Date of Pronouncement : 06.08.2024

ORDER

PER AMARJIT SINGH, AM:

This appeal of the assessee for the assessment year 2018-19 is directed against the order dated 28.02.2023 passed by the ld. Commissioner of Income-tax, Appeals, NFAC, Delhi [hereinafter referred to as 'the ld. CIT(A)']. The assessee has raised the following grounds of appeal:

"1. On the facts and circumstances of the case and in law, the appellant prays that the appellate proceeding may please be restored back to the CIT (A) as she has not received any notices of hearing which were issued by the Ld. CIT (A) and, therefore, the order has been passed by the Ld. CIT (A) without hearing the appellant.

2. On the facts and circumstances of the case and in law, the Ld. CIT (A) has erred in confirming the addition of 4,19,96,68,462 as unexplained cash credit under Section 68 which represented the increase in the unsecured loans as reported in the ITR filed for the assessment year

under appeal as compared to the amount of unsecured loans reported in the ITR filed for the immediately preceding assessment year.

3. On the facts and circumstances of the case and in law, the Ld. CIT (A) ought to have appreciated the fact that the said amount by which the amount of unsecured loans reported in the ITR had increased included the amount of 3,91,09,52,149 representing mere regrouping of the amount reported as sundry creditors in the ITR of the preceding assessment year as unsecured loans in the ITR of the assessment year under appeal and, therefore, it could not have been assessed as unexplained cash credits under Section 68.

4. On the facts and circumstances of the case and in law, the Ld. CIT (A) ought to have appreciated the balance amount of 25,03,34,476 included in the increase in the amount of unsecured loans reported in the ITR was pertaining to advances received from the customers and advance received against the sale of land which should not have been assessed as unexplained cash credits under Section 68.

5. On the facts and circumstances of the case and in law, the Ld. CIT (A) has erred in confirming the addition of 17,23,51,596 as unexplained cash credit under Section 68 which represented the increase in the amount of proprietor's capital as reported in the ITR filed for the assessment year under appeal as compared to the amount of proprietor's capital reported in the ITR filed for the immediately preceding assessment year.

6. On the facts and circumstances of the case and in law, the Ld. CIT (A) ought to have appreciated the fact that the said amount by which the amount of proprietor's capital reported in the ITR had increased included the amount of 1,00,32,201 representing net profits earned during the year in the proprietary concerns of the appellant and, therefore, it could not have been assessed as unexplained cash credits under Section 68.

7. On the facts and circumstances of the case and in law, the Ld. CIT (A) ought to have appreciated the balance amount of 16,23,19,395 included in the increase in the amount of proprietor's capital reported in the ITR was the introduction of fresh capital by the appellant mainly from the repayment of loans received by the appellant from various group entities and it should not have been assessed as unexplained cash credits under Section 68.

8. On the facts and circumstances of the case and in law, the Ld. CIT (A) has erred in confirming the addition of interest income of 1,72,51,247 without appreciating the fact that the said interest income was reduced

from the corresponding interest expenditure and only the net amount of interest expenditure was added to the work-in-progress.

9. On the facts and circumstances of the case and in law, the Ld. CIT (A) has erred in confirming the addition of 12,53,69,06,712 as the income of the appellant which represented the difference between the amount of closing stock of the finished goods reported in the Profit & Loss A/c and the total inventories reported in the Balance Sheet filled up in the ITR.

10. On the facts and circumstances of the case and in law, the Ld. CIT (A) ought to have appreciated the fact that the appellant had reported only the closing stock of the finished goods of only one of the proprietary concerns of the appellant in the Profit & Loss A/c in which the sale of finished inventories had occurred during the year and the other inventories were not routed through Profit & Loss A/c.”

2. There was delay in filing the appeal by 340 days. Before us, the assessee has filed application for condonation of delay in filing the appeal along with affidavit dated 08.02.2024, Before us, the ld. Counsel submitted that assessee came to know about the order passed by the First Appellate Authority only on 02.02.2024 from the portal of the Income Tax Department through one of her consultant Mr. Suraj Nair who accessed her account on the e-filing portal of the Income Tax Department. The assessee is a senior citizen lady having age of 65 years and she depends upon others for communications through e-mails etc. because of demised of the Chairman of the group Late Shri Anil Agarwal the business of the group almost to a standstill situation and the day to day activities could not be managed professionally. However, the employees of the assessee has not communicated about the information of passing of the order in the e-mails of the assessee. It is also submitted that because of various financial default occurred in the companies of the group, there are various proceedings launched against the entire group of the assessee as a result 90% of the employees of the group of the assessee left the organization consequently most of the mails remained unattended due to lack of adequate manpower. It was also informed that at that time the entire corporate office was not

accessible as the same was sealed because of the various financial irregularities found in the group companies of the assessee under IBC proceedings.

3. Heard both the sides on the issue of delay in filing the appeal.

4. We have perused the contents of the affidavit 08.02.2024 filed by the assessee for condoning the delay in filing the appeal. In the affidavit, assessee has reported the similar facts and circumstances which resulted delay in filing the impugned appeal also referred above in this order. The assessee has also referred various judicial pronouncement for condoning the delay in filing the appeal as under:

- i. Collector Land Acquisition vs Mst. Katiji and ors. 167 ITR 471 (SC)*
- ii. Artist Tree Pvt. Ltd. vs CBDT 369 ITR 0691 (Bom)*
- iii. Prima Paper & Engineering Pvt. Ltd. vs CIT 221 Taxman 209 (Bom)*
- iv. CIT vs Kamal Kumar Johari 77 DTR 12 (Bom)*
- v. Lahoti Overseas Ltd. vs DCIT 46 CCH 0668 Mum Trib*
- vi. Earthmetal Electricals (P) Ltd. vs ITO 4 SOT 0484 (Mum)*
- vii. Shri Y.P. Trivedi vs JCIT ITA No. 5994/Mum/2010*

5. Looking to the above facts and circumstances it appeared that there is a reasonable cause for delay in filing this appeal particularly because of recovery proceedings initiated by the bank under the IBC proceedings, the corporate office premises of the assessee was sealed and there was no access to the e-mail ID of the assessee which was maintained on the specified computer in the corporate office. Further most of the employees of the assessee group had left the organization and there were no senior employees to manage the day to day affairs of the group of the assessee.

6. We have also perused the decision of Hon'ble Supreme Court in the case of Collector Land Acquisition vs Mst.Katiji and ors – 167 ITR 471 (SC) wherein it is held that sufficient cause for the purpose of condonation of delay should be interpreted with the view to do even

handed justice on merit in preference to the approach which scuttles a decision on merits. Considering the above facts and findings, we condone the delay of 340 days in filing this appeal.

7. Fact in brief is that return of income declaring Nil income was filed on 30.10.2018. The case was subject to scrutiny assessment and notice u/s 143(2) of the Act was issued on 23.09.2019. During the course of assessment, the assessing officer has issued various notices u/s 142(1) of the Act, however, the assessee has not made any compliance to the notices issued by the assessing officer during the course of assessment proceedings. Therefore, the assessing officer has completed the assessment ex-parte u/s 144 r.w.s. 143(3A) and 143(3B) of I.T. Act. The assessee was engaged in the business of construction and property developer. During the course of assessment, the assessing officer has noticed from the details available with his office that assessee has shown outstanding unsecured loan of Rs. 4,75,56,71,897/- as on 31.03.2017 which was increased by Rs. 4,19,96,68,462/- during F.Y. 2017-18. Since the assessee has not made any compliance during the course of assessment proceedings to explain the genuineness of the aforesaid unsecured loan, therefore, the assessing officer has treated the amount of Rs. 4,19,96,68,462/- as unexplained cash credit u/s 68 of the Act and the same was added to the total income of the assessee. Further, at the time of assessment, the AO noticed that assessee has shown share capital in the balance sheet as on 31.03.2017 at Rs. 2,97,75,80,634/- however in the ITR filed on A.Y. 2018-19, the assessee has shown capital of Rs. 3,14,99,32,230/-. Therefore, the AO observed that share capital to the assessee was increased by the amount of Rs. 17,23,51,596/- during the F.Y. 2017-18. Since the assessee has failed to make any submission to explain increased share capital, therefore, the AO has treated the increased amount of Rs. 17,23,51,596/- as unexplained cash credit u/s 68 and

added to the total income of the assessee. Further, during the course of assessment, the assessing officer noticed that assessee has shown income from other sources of Rs 26,354/- in the ITR. During the course of assessment, the AO asked the assessee to explain how the gross interest shown in the schedule OS of ITR was less than interest receipt reported in 26AS. As per Form 26AS, the interest income was reflected at Rs. 1,72,77,601/-, however, in the ITR, the assessee had shown interest income only of Rs. 26,354/-. Therefore, the difference of Rs. 1,72,51,247/- (Rs. 1,72,77,601 – Rs. 26,354) was considered as income from other sources and added to the total income of the assessee.

8. Further, on perusal of ITR filed by the assessee, the AO observed that in the P & L A/c, the assessee has shown closing stock of finished goods at value of Rs. 7,00,62,248/- whereas in the balance sheet the assessee had disclosed the closing stock at value of Rs. 1260,69,68,960/-. Since the assessee has not made any submission and details during the course of assessment proceedings, therefore, the difference amount of Rs. 1253,69,06,712/- was added to the total income of the assessee.

9. Aggrieved assessee filed appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee as the assessee has failed to make compliance to the various notices of hearing issued by the ld. CIT(A).

10. During the course of appellate proceeding before us, the ld. Counsel submitted that assessee could not make compliance before the ld. CIT(A) because of the facts and circumstances as reported in the affidavit filed by the assessee that there were various litigations going on and the office premises of the group where the relevant record pertaining to the assessee maintained was sealed under the IBC proceedings. Further, the assessee could not keep track on the various

notices of hearing issued by the ld. CIT(A) as there was no senior employees to communicate the information from the e-mail account to the assessee as the same was maintained in the office computer which was under prohibitory order because of IBC proceedings. The ld. Counsel also submitted that at the assessment stage, the assessee could not make compliance at all, therefore, assessing officer has made all the additions on assumption basis without any justification. Therefore, the ld. Counsel requested that assessee should be provided more opportunity for adjudicating her case on merit.

11. On the other hand, ld. DR supported the order of ld. CIT(A).

12. Heard both the sides and perused the material on record. The case of the assessee was subject to scrutiny assessment. However, the assessee has not made any compliance before the assessing officer. Therefore, the assessing officer has added the difference amount of unsecured loan reflected in F.Y. 2016-17 and F.Y. 2017-18 as unexplained cash credit u/s 68 of the Act. Similarly, the assessing officer has also added the increased amount of Rs. 17,23,51,596/- in the share capital account of the assessee reflected in the balance sheet for the F.Y. 2017-18 after comparing the same with the balance sheet for F.Y. 2016-17 for the aforesaid two periods treating the same as unexplained cash credit u/s 68 of the Act. The AO has also made addition of Rs. 1,72,51,247/- under the head income from other sources since the assessee had shown less interest income in the ITR vis-a-vis the interest income reflected in Form No. 26AS. The AO has also made addition of Rs. 12,53,69,06,716/- as undisclosed closing stock of the assessee in the year under consideration being the difference in the amount of closing stock reflected in the profit and loss account and balance sheet of the assessee. After looking to the aforesaid facts and circumstances it is evident that assessing officer has

made all the additions without considering any submission of the assessee as the assessee has not made any compliance during the course of assessment proceedings because her office premise was not accessible due to restriction imposed under the IBC proceedings carried out in the group concern of the assessee.

13. It is demonstrated from the aforesaid facts and circumstances that the case of the assessee was not decided on merit at the level of lower authorities as discussed above in this order.

14. Normally whenever any irregularities crept in the proceedings then after removing the irregularity proceedings is to be initiated from that stage but by remitting the issue to the First Appellate Authority, we would be multiplying the litigation because the ld. CIT(A) could call for a remand report from the assessing officer and proceedings would commence on two stage, in order to avoid that situation, we would deem it proper to set aside the order to the file of assessing officer for deciding de novo on merit after examination and verification of the relevant details to be furnished by the assessee. It is needless to say that observation made by us will not injure or impair, the case of the assessing officer and will not cause any prejudice to the defense explanation of the assessee. Therefore, the appeal of the assessee is allowed for statistical purposes.

15. The assessee has filed the following additional grounds of appeal:

“1. On the facts and circumstances of the case and in law, the assessment order dated 10.04.2021 passed u/s 144 r.w.s. 143(3A) and 143(3B) is bad in law and without jurisdiction.

2. On the facts and circumstances of the case and in law, the assessment order dated 10.04.2021 is bad in law as the same has been passed in gross defiance of section 144B of the Act, in defiance of SOPs issued in this regard and in gross violation of principles of natural justice in as much as the ld. AO has failed to consider and deal with the submissions

filed and in also not granting adjournment sought for. Thus, the impugned assessment should be quashed and set aside.”

Since we have set aside the case to the file of the assessing officer for de novo assessment, therefore, the additional ground of appeal filed by the assessee on the ground that assessment order passed u/s 143(3A) and 143(3B) has become infructuous therefore the same stand dismissed.

16. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 06.08.2024.

Sd/-
(RAJ KUMAR CHAUHAN)
JUDICIAL MEMBER

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Mumbai, Dated: 06.08.2024
Biswajit, Sr. P.S.

Copy to:

1. The Appellant:
2. The Respondent:
3. The CIT,
4. The CIT (A)
5. The DR

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By Order

Assistant Registrar
ITAT, Mumbai Benches, Mumbai