

**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH : BANGALORE**

**BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER
AND
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

ITA No. 1179/Bang/2024
Assessment Year : 2019-20

The Deputy Commissioner of Income Tax, Circle – 2(1)(1), Bangalore.	Vs.	M/s. Deccan Charters Pvt. Ltd., Jakkur Aerodrome, Bellary Road, Jakkur B.O., Bangalore North, Bangalore – 560 064. PAN: AACCD9105G
APPELLANT		RESPONDENT

Assessee by	:	Smt. Sunaina Bhatia, CA
Revenue by	:	Shri D.K. Mishra, CIT-DR

Date of Hearing	:	01-08-2024
Date of Pronouncement	:	07-08-2024

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal is filed by the revenue against the order passed by Ld.CIT(A)-3, Mumbai / NFAC for A.Y. 2019-20 on following grounds of appeal:

“1. The Addl. CIT/JCIT(A) erred in holding that if the net worth of the undertaking is negative, the same should be considered as zero and should be disregarded for the

purposes of computing capital gains under Section 50B of the Act.

2. The Addl. CIT/JCIT(A) has ignored the methodology for determining net worth provided in Explanation 1 read with Explanation 2 of section 50 B.”

2. Brief facts of the case are as under:

2.1 The assessee e-filed his return of income for A.Y. 2019-20 on 26.10.2019, declaring nil income after set off of brought forward losses. The return was processed u/s. 143(1) of the Act, wherein the CPC proposed following addition:-

1. Disallowance of Business loss of Rs. 6,49,36,227 in view of
2. Business Income determined at Rs. 15,91,97,871/-.

No reply was filed by the assessee against the above proposal and therefore intimation u/s. 143(1) was finalised on 09/06/2020.

2.2 The intimation order under section 143(1) mentioned as under:

“Please refer to this office communication dated and 23-Mar-20 sent to email ID and bkrishna@deccanair.com. As there has been no response/ the response given is not acceptable the adjustments(s) as mentioned below are being made to the total income as per the provisions of section 143(1)(a)”

Aggrieved by the intimation u/s. 143(1)(a), the assessee preferred appeal before the Ld.CIT(A).

2.3 The Ld.CIT(A) after considering the submissions of the assessee was of the view that the disallowance made u/s. 143(1)(a) is not sustainable as it was a debatable issue.

2.4 The Ld.CIT(A) noted that, the intimation u/s. 143(1)(a) making disallowance u/s. 50B of the act is a non-speaking cryptic order without verifying any documentations. He thus deleted the variations in computing the business income of the assessee and allowed the consequential claim of set off of loss as per the return of income filed by the assessee.

Aggrieved by this order of the Ld.CIT(A)/NFAC, revenue is in appeal before this *Tribunal*.

3. At the outset, the Ld.DR submitted that there is a delay of 24 days in filing the present appeal before this *Tribunal*.

3.1 The Ld.DR submitted that due to heavy work load associated with the assessment proceedings, the Ld.AO and due to acute shortage of manpower, the delay occurred in filing the present appeal. He thus prayed for the condonation of the delay.

3.2 The Ld.AR though did not support the submissions of the Ld.DR could not controvert the submissions by the Ld.DR.

3.3 We note that the delay in filing the present appeal by the revenue is unintentional and there is a reasonable cause made out by the revenue in filing the present appeal belatedly. In the interest of justice, the delay in filing the present appeal is condoned.

4. On merits of the case, the variations made by the CPC u/s. 143(1)(a) is in respect of capital gains of slump sale u/s. 50B of the act. As rightly observed by the Ld.CIT(A)/NFAC, such issues cannot be considered and disallowed u/s. 143(1)(a) of the act, for the reason that, it requires verification of the documents. We note that the Ld.CIT(A) does not have the power to remand the issue to the Ld.AO for necessary verification because of which the addition was deleted. However, the claim of the assessee requires to be verified in the light of the evidences filed by assessee by granting proper opportunity of being heard to the assessee. In the interest of justice, we remit this issue to the Ld.AO to consider the claim in accordance with law afresh.

Needless to say that proper opportunity of being heard must be granted to assessee in accordance with law.

Accordingly, the grounds raised by the revenue stands partly allowed.

In the result, the appeal filed by the revenue stands partly allowed for statistical purposes.

Order pronounced in the open court on 07th August, 2024.

Sd/-
(WASEEM AHMED)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 07th August, 2024.
/MS /

Copy to:

1. Appellant
3. CIT
5. Guard file

2. Respondent
4. DR, ITAT, Bangalore
6. CIT(A)

By order

Assistant Registrar,
ITAT, Bangalore