

IN THE INCOME TAX APPELLATE TRIBUNAL “G” BENCH, MUMBAI

BEFORE MS. KAVITHA RAJAGOPAL, JM AND
SHRI GIRISH AGRAWAL, AM

ITA No. 3874/Mum/2023
(Assessment Year: 2009-10)

Sunstar Mercantile Company Ltd. Bungalow No. 2, KIA Park, Veera Desai Road, Andheri (W), Mumbai-400 053	Vs.	ITO Ward 11(2)(4) Mumbai
PAN/GIR No. AADCS 8990 F		
(Assessee)	:	(Respondent)
Assessee by	:	Shri Satyaprakash Singh
Respondent by	:	Shri Rajesh Meshram
Date of Hearing	:	14.08.2024
Date of Pronouncement	:	22.08.2024

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) 2009-10.

2. The assessee has filed an application for condoning the delay of one day in filing the present appeal. On perusal of the same, we deem it fit to condone the said delay as there being a sufficient cause for the delay in filing the appeal beyond the period of limitation. Delay condoned.

3. The assessee has raised the following grounds of appeal:

1. *On the facts and circumstances of the Appellant's case and in law the ld. Commissioner of Income Tax (Appeals) erred in not commenting on validity of reopening of assessment.*
 2. *On the facts and circumstances of the Appellant's case and in law the ld. Commissioner of Income Tax (Appeals) erred in completing the assessment u/s. 143(3) of the Income Tax Act, 1961 which is bad-in-law.*
 3. *On the facts and circumstances of the Appellant's case and in law the ld. Commissioner of Income Tax (Appeals) erred in confirming the additions made by the ld. A.O. without providing sufficient opportunities of being heard and without considering the submission made by the appellant company during the course of appellate proceedings.*
 4. *On the facts and circumstances of the Appellant's case and in law the ld. Commissioner of Income Tax (Appeals) erred in not commenting on the fact that an opportunity to cross examination has not been awarded to the appellant.*
 5. *On the facts and circumstances of the Appellant's case and in law the ld. Commissioner of Income Tax (Appeals) erred in confirming the addition of Rs.3,43,21,000/- by treating the share application/share premium/call money as unexplained cash credit u/s. 68 of the Income Tax Act, 1961.- Rs.1,02,96,300/-*
4. The brief facts are that the assessee company is engaged in the business of manufacturing of textile products and filed its return of income on 30.09.2009, declaring Nil income. The ld. Assessing Officer ('A.O.' for short) reopened the assessee's case for the reason that income to the tune of Rs.397.25 lacs had escaped assessment and hence, notice u/s.148 of the Act was issued and served upon the assessee. In response to the said notice the assessee had filed the relevant details as called for. The ld. A.O. then passed the assessment order u/s. 143(3) of the Act on 26.03.2015, thereby determining the total income at Rs.3,43,21,000/- by making an addition u/s. 68 of the Act on account of 'share capital/share premium/call money'.
5. The assessee was in appeal before the first appellate authority, challenging the assessment order.
6. The ld. CIT(A) vide order dated 31.08.2023, upheld the order of the ld.A.O. for the assessee has failed to furnish neither the written submission nor any documentary

evidences to prove the identity and credit worthiness of the subscribers and the genuineness of the transaction.

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

8. We have heard the rival submissions and perused the materials available on record. It is observed that the assessee has challenged the additions made by the Id. A.O. before the first appellate authority but has been non compliant and has failed to corroborate its claim by any supporting documentary evidence during the first appellate proceeding.

9. The learned Authorised Representative ('Id. AR' for short) for the assessee contended that the assessee may be given one more opportunity to present its case before the Id. CIT(A) and had proposed to file documentary evidences in support of the assessee's claim.

10. The learned Departmental Representative ('Id.DR' for short) vehemently opposed to setting aside the issue to the file of the Id. CIT(A) for the reason that the assessee was given several opportunity by the Id. CIT(A) which was not availed by the assessee.

11. On the above factual matrix of the case, we are of the considered view that the assessee may be given one more opportunity to present its case before the first appellate authority. We, therefore, remand all these issues back to the file of the Id. CIT(A) for *de novo* adjudication with the direction that the assessee should comply with the proceedings without any undue delay on its side and to furnish all relevant documents in support of its

claim. The Id. CIT(A) is directed to decide the issue on the merits based on the submission of the assessee and in accordance with the law.

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

Order pronounced in the open court on 22.08.2024

Sd/-

(Girish Agrawal)
Accountant Member

Mumbai; Dated : 22.08.2024
Roshani, Sr. PS

Sd/-

(Kavitha Rajagopal)
Judicial Member

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