

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH
MUMBAI
BEFORE SHRI BR BASKARAN, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 178 & 181/RPR/2022
(A.Y.2010-11 & 2014-15)

Lizard Trading Pvt Ltd, 1 st Floor, 95/A, Chittaranjan Avenue, Kolkata-700073. West Bengal.	Vs.	ITO-Ward -1, Aayakar Bhawan, Chakradhar Nagar, Raigarh-496001. Chhattisgarh.
PAN/GIR No. AABCL6975D		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

Appellant by	None
Respondent by	Shri. Ajay Chandra, CIT DR & Shri Manoj Kumar Sinha.Sr.DR.

सुनवाई की तारीख/Date of Hearing	12.08.2024
घोषणा की तारीख/Date of Pronouncement	14.08.2024

ORDER

PER PAVAN KUMAR GADALE, JM:

These two appeals are filed by the assessee against the separate orders of the National Faceless Appeal Centre (NFAC), Delhi / CIT(A) passed u/sec 250 of the Act.

2.Since the issues involved in these appeals are common and identical, hence are clubbed, heard and a consolidated order is passed. For the sake of convenience, shall take up the ITA No.178/RPR/2022 for A.Y 2010-11 as a lead case and the facts narrated. The assessee has raised the following grounds of appeal

1. That as per the law & facts of the case, the National Faceless Appeal Centre (NFAC) has grossly erred in dismissing Ground of appeal Nos. 1 raised by the appellant before the NFAC as re-assessment proceeding u/s 148 in instant case is invalid and void.

2 That the reopening of the assessment w/s. 148 of the Income Tax Act, 1961 is bad in law and hence, the order dt.06.12.2016 passed u/s, 143(3) r.w. s. 147/144 need to be quashed.

3 That as per the law & facts of the case, the National Faceless Appeal Centre (NFAC) has grossly erred in dismissing Ground of appeal Nos. 2 raised by the appellant before the NFAC thereby sustaining the additions of Rs. 30,01,00,000/- as unexplained cash credits u/s 68.

4 That in the facts and circumstances of the case, the Ld. AO erred in making addition of Rs. 30,01,00,000/- holding the same to be the unexplained cash credit in the books of the assessee in terms of Sec.68 of the Income Tax Act, 1961. The addition, being based on the surmises & conjectures, need to be deleted as unexplained cash credits u/s 68.

5 That in the facts and circumstances of the case, the Faceless Appeal Centre (NFAC) erred in passing appellate order without providing reasonable opportunity of being heard to the assessee.

6. That in the facts and circumstances of the case, the Ld. AO erred in making assessment u/s 144 r.w.s. 147 in hurry and without giving proper opportunity of being heard.

7. That in the facts and circumstances of the case, the Ld. AO erred in issuing notice u/s 148 without necessary approval and without providing reasons to believe.

8. That in the facts and circumstances of the case, the Ld. AO erred in making vague assessment order without quoting specific section under which the order is being passed.

9. The appellant craves leave to add, amend, alter or vary from the above grounds of appeal at or before the time of hearing.

3. The brief facts of the case are that, the assessee company is engaged in the business. The assessee has filed the return of income for the A.Y 2010-11 on 12.09.2009 disclosing a total income of Rs. Nil and the return of income was processed u/sec 143(1) of the Act. Subsequently the Assessing Officer (A.O) has received information from DDIT (Inv) Jodhpur that the assessee has obtained share capital at a premium from the entities of Jagdeesh Prash Purohit group, who are engaged in providing the accommodation entries to various persons and the assessee is a beneficiary. Therefore the AO has reason to believe that the income has escaped assessment and issued notice u/sec 148 of the Act and in compliance the assessee has filed the return of income on 23.08.2016 disclosing a total income of Rs.-15,720/-. Further notice u/sec 142(1) of the Act was issued calling for the information to substantiate share capital transactions and there was no proper compliance. Whereas the AO has considered these facts and issued the notice u/sec 133(6) of the Act on the investors and they were returned unserved by the postal authorities. Finally the A.O has issued a show cause notice referred at Para 18 of the assessment order. Since there was no compliance by the assessee, the AO has invoked the provisions u/sec 144 of the Act and relied on the material available on record and

made best judgement assessment as the assessee could not substantiate the ingredients required u/sec 68 of the Act i.e the genuineness, identity and creditworthiness of investors and the A.O has treated the amount of Rs. 30,01,00,000/- as unexplained cash credits u/sec 68 of the Act and assessed the total income of Rs.30,01,00,000/- and passed the order u/sec 144 r.w.s147 of the Act dated 06.12.2016.

4. Aggrieved by the order, the assessee has filed an appeal before the CIT(A), whereas the CIT(A) has considered the grounds of appeal, statement of facts and findings of the AO and has issued notices of hearing and since there was no proper compliance by the assessee to notices.. Therefore the CIT(A) considering the information on record has confirmed the action of the A.O and dismissed the appeal. Aggrieved by the order of the CIT(A), the assessee has filed an appeal before the Hon'ble Tribunal. At the time of hearing none appeared on behalf of the assessee and the Ld. DR supported the order of the CIT(A).

5. We heard the Ld.DR submissions and perused the material on record. Prima-facie the CIT(A) has passed the order considering the fact that there is no proper compliance nor appearance in spite of providing adequate opportunity of hearing and the notices were issued. Therefore, the CIT(A) was of the opinion that the assessee is not interested in prosecuting the appeal and dismissed

the appeal ex-parte confirming the action of the assessing officer. The Ld. CIT(A) has issued the notices of hearing but there was no response and thus the Ld.CIT(A) came to a conclusion that the assessee is not interested and decided the appeal based on the information available on record. Whereas the assessee has raised grounds of appeal challenging the addition made by the A.O and there could be various reasons for non appearance which cannot be overruled. Therefore, considering the facts and principles of natural justice, we shall provide with one more opportunity of hearing to the assessee to substantiate the case with evidences and information subject to payment of cost of Rs. 5000/- to the Income Tax Department within one month from the date of receipt of the order and produce the proof of payment. Accordingly, we set aside the order of the CIT(A) and remit the entire disputed issues to the file of the CIT(A) to adjudicate afresh and the assessee should be provided adequate opportunity of hearing and shall cooperate in submitting the information for early disposal of the Appeal. And we allow the grounds of appeal of the assessee for statistical purposes.

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6. As the facts and circumstances in this appeal that, the CIT(A) has passed an ex parte order and is identical to ITA No 178/RPR/2022, for the A.Y 2010-11. Hence the decision rendered in above paragraphs would apply mutatis

mutandis for this appeal also subject to payment of cost of Rs. 5000/- to the Income Tax Department within one month from the date of receipt of the order and produce the proof of payment. Accordingly, we allow the grounds of appeal of the assessee for statistical purposes.

7. In the result, both the appeals filed by the assessee are allowed for statistical purposes.

Order pronounced in the open court on 14.08.2024

Sd/-
(BR BASAKARAN)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated: 14/08/2024
KRK

Copy of the Order forwarded to:

1. The Appellant,
 2. The Respondent
 3. The CIT(A)-
 4. CIT
 5. DR, ITAT, Mumbai
 6. Guard file.
- //True Copy//

BY ORDER,
(Dy./Asstt. Registrar)ITAT,
Mumbai