

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH : BANGALORE**

BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

ITA No.632/Bang/2024
Assessment year : 2011-12

Metal Closures Pvt. Ltd., 39/4B, 12 th KM, Kanakapura Road, Bangalore – 560 062. PAN : AABCM 1666J	Vs.	The Assistant Commissioner of Income Tax, Circle 4(1)(2), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri R.E. Balasubramanyam, CA
Respondent by	:	Shri Sunil Kumar Agarwal, CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	11.06.2024
Date of Pronouncement	:	28.08.2024

ORDER

Per Laxmi Prasad Sahu, Accountant Member

This appeal is filed by the assessee against the order dated 05.02.2024 of the CIT(Appeals), National Faceless Appeal Centre, Delhi [NFAC], for the AY 2011-12 on the following grounds:-

- “ 1) The impugned order is opposed to law and facts of the case insofar as it is prejudicial to the interest of the Appellant.
- 2) The impugned order u/s 143(3) r.w.s 147 of the Income-tax Act, 1961 passed by the Assessing Officer and confirmed by the

NFAC is legally invalid, bad-in-law and void ab initio inasmuch they failed to appreciate that the notice u/s 148 of the Act is barred by limitation since it is served beyond the time limit specified u/s 149 of the Act as it stood at that point of time.

3) The impugned order is passed by the NFAC is erroneous and bad in law inasmuch as he failed to appreciate that the Assessment Order itself is void ab initio, illegal and bad in law since the Ld. AO failed to appreciate that the Assessment proceedings ought to have been stayed in pursuance of the provisions of section 14 of the insolvency & Bankruptcy Code, 2016 which came into effect vide NCLT order dated 14/12/2018.

4) Without prejudice to above grounds, the NFAC failed to appreciate that the addition made by the Assessing Officer solely on the basis of the fraudulent financial statements shared by Punjab National Bank with figures that are arbitrary, untenable and unjustified inasmuch as the Assessing Officer did not provide any independent corroborative evidence or material to support these additions.

5) Without prejudice to grounds 2 & 3 above, the NFAC erred in upholding the order of the Ld. AO without appreciating that the fraudulent financial statements contained both inflated items of income as well as expenditure and the Ld. AO had considered only the inflated figures of income in the fraudulent financial statements without considering the inflated figures of expenditure.

The appellant prays for leave to add, delete, modify and/or adduce additional ground at any time before the appeal is disposed off.”

2. Briefly stated the facts of the case are that the assessee is engaged in the business of manufacturing and supply of ROPP caps and crown corks, shoe polish containers, battery jackets, flash torches etc. The assessee filed return of income declaring income of Rs.4,75,20,768 and the return was processed u/s. 143(1) of the Act. Later on as per information received from DDIT (Inv.), Unit 1(2),

Bengaluru, assessee had suppressed turnover in the Profit & Loss account submitted to the department when compared to the financial statements submitted to Punjab National Bank. Accordingly after obtaining approval from the competent authority the case was reopened u/s. 147 by issue of notice u/s. 148 to the assessee on 28.03.2018 served on 02.04.2018. In response the assessee filed letter dated 09.11.2018 stating that the return filed on 29.09.2011 be treated as return filed in response to notice u/s. 148. Accordingly statutory notices were issued to the assessee.

3. During the course of reassessment proceedings, the assessee was asked to file certain details regarding break up of sundry creditors, sundry debtors and confirmation from sundry creditors, however the same was not filed. The AO noted that the financial results reported in the return filed u/s. 139(1) and the financials shown to the Punjab National Bank were different, there is difference in the sales and purchases. The AO computed the GP rate @ 23.76% whereas the GP rate shown to Punjab National Bank is 18.53%, accordingly the AO computed the GP rate on the turnover shown to Punjab National Bank and computed profit of Rs.5329.35 lakhs. The AO after making adjustment to the net profit shown of Rs.603 lakhs in the return computed on the suppressed sales of Rs.47,26,36,000 and assessed income of Rs.52,01,56,768 in the assessment order passed on 30.12.2019. Aggrieved from the above order, the assessee filed appeal before the First Appellate Authority (FAA).

4. The ld. FAA after considering the entire submissions partly allowed the appeal of the assessee and restricted the addition to the tune of Rs.1170.36 lakhs and the balance was allowed. Aggrieved, the assessee is in appeal before the ITAT.

5. The ld. AR reiterated the submissions made before the FAA and submitted in respect of ground No.2 that reassessment order passed by the AO u/s. 143(3) r.w.s. 147 of the act is legally invalid, bad in law and void ab initio. The notice issued by the AO is barred by limitation as per section 149 since the notice was served beyond the limitation period on 02.04.2018 and the case is related to AY 2011-12 which is beyond 6 years. He submitted that the whether notice u/s. 148 is issued or served within the time limit provided in section 149 has been examined by various High Courts and the ld. AR relied on the Hon'ble Madras High Court judgment in the case of Smt. Parveen Amin Bhathara v. ITO [2022] 143 taxmann.com 353 (Madras) wherein on similar facts it was held that notice u/s. 148 served after the expiry of six years from the end of the relevant year was held barred by limitation. Further he submitted that during the course of reassessment proceedings financial creditors consisting of PNB, SBI and others filed application before the NCLT seeking to admit and initiate corporate insolvency resolution process as per section 7 of the Insolvency & Bankruptcy Code, 2016 (IBC). NCLT admitted the application on 14.12.2018 and appointed an interim Resolution Professional on the same date. NCLT also declared moratorium u/s. 14 of IBC vide its order dated 14.12.2018. As per section 14 of IBC, there could be no

initiation or continuation of suits/ proceedings against the corporate debtor (assessee company) In other words, any pending assessment proceedings should have been kept in abeyance till such time the resolution process is completed. The Insolvency Professional appointed by NCLT had also intimated the income tax department regarding initiation of liquidation process in the case of assessee vide email dated 21.10.2019. Despite this, the AO passed the reassessment order on 30.12.2019 which was after declaration of moratorium. Further the Id. AR submitted that the AO has made addition only on the basis of fraudulent financial statement with Punjab National Bank and the AO has not provided corroborative evidence to support the additions made. The AO has chosen only the inflated sales shown to Punjab National Bank and not considered the inflated expenditure. It is not open to the AO to pick and choose which figures to rely upon from the financial statements without rejecting the books of account. The Id. AR has filed paperbook containing pages 1 to 140 which is placed on record.

6. The Id. DR relied on the order of lower authorities and submitted that in respect of ground No.1 regarding issuance of notice within period of limitation of 6 years as per section 149 of the Act that notice was issued on 28.3.2018 and duly served to the assessee on 02.04.2018. The section is very much clear that notice should be issued within specified time provided under the Act and the AO has done so. There is no specific words regarding service of notice to the

assessee within the specified time limit. Accordingly there is no error in the issue of notice.

7. The Id. DR submitted that the case law relied by the Id. AR in the Madras High Court judgment in the case of Smt. Parveen Amin Bhathara noted supra is distinguishable on facts. In that case there was no proof of service of notice to the assessee. Here in the case on hand, there is no dispute that notice was issued on 28.03.2018 which was duly served on 02.04.2018. In view of this the notice issued was within the purview of law, there is no any error for issuing notice u/s 148 of the Act.

8. Further the Id. DR submitted that the moratorium was granted by NCLT as per section 16 of IBC, 2016 which was not informed to the AO by the assessee or the Insolvency Professional and the AO was not aware about the proceedings initiated by the financial creditor with NCLT. Subsequently on 14.10.2020 the NCLAT set aside the impugned order passed by NCLT on 14.12.2018 and the application preferred by the financial creditor u/s. 7 of IBC, 2016 is dismissed. Hence the assessment order passed by the AO and the appellate order by the FAA has no bearing on the proceedings before the NCLT.

9. The Id. DR further submitted that assessee has furnished wrong information to the department as well as to the financial institution for getting undue benefit from Punjab National Bank and he was unable to prove that the financial statement is correct. Therefore the revenue authorities are justified in making addition.

10. Considering the rival submissions we note that the case was reopened by the AO after recording reasons that information was received from DDIT(Inv), Unit 1(2), Bengaluru along with copies of audited financial statements submitted by appellant to Punjab National Bank after taking approval from the Pr.CIT, Bangalore. Accordingly notice was issued to the assessee on 28.03.2018 which was served on 02.04.2018. There is no dispute regarding the service of notice on 02.04.2018. The AO issued notice u/s. 142(1) which was complied and the AO reassessed the income @ Rs.52.02 crores against which the Id. FAA restriction the addition to the tune of Rs.1170.368 lakhs.

11. The assessee has taken ground No.2 that notice u/s. 148 issued is barred by limitation which is not correct sine the notice was issued within the period of six years on 28.03.2018 and there is no dispute regarding issuance of notice which was duly served on 02.04.2018. We have gone through the provisions of the Act, it talks about the issue of notice, the section 149 is very much clear that notice must be issued within the period as per section 149(1)(a)/(b). The section talks about the time limit specified for issue of notice only and not for the service of notice within the period specified. The judgment relied on by the Id. AR is not applicable since in that case the revenue was unable to prove with cogent material that notice was despatched to the assessee within the specified date. Here in the case on hand, there is no dispute on such point. Accordingly ground No.2 is rejected.

12. Ground No.3 : We note from the documents submitted that Hon'ble NCLT, Bangalore vide order in C.P.(IB) No.103/BB/2018 dated 14.12.2018 u/s. 7 of IBC, 2016 r.w. Rule 4 of I&B(AAA) Rules, 2016 granted moratorium and Insolvency Professional was appointed as per para 9(2) of the order. Later on Hon'ble NCLAT, New Delhi passed order in C.A.(AT) (Insolvency) No.68 of 2019 dated 14.10.2020 as under:-

“23. In view of the law enunciated by the Hon'ble Supreme Court of India in the above-mentioned cases and the facts and circumstances of this case, it is clear that the Application filed under Section 7 of the Code by the Financial Creditor is barred by Limitation.

24. Given the findings above, we have no other option but to set aside the Impugned Order dated 14th December 2018. The Applicant preferred by Respondent No.1 State Bank of India, against the Corporate Debtor, Respondent No.2 (Company) under Section 7 of the Code is dismissed. The Appellant 'Corporate Debtor' (Company) is released from all rigours of 'Moratorium' and is allowed to function through its Board of Directors with immediate effect. The Interim Resolution Professional/Resolution Professional will provide and intimate the fees for the period he has functioned and costs of the 'Corporate Insolvency Resolution Process' incurred by him to the Financial Creditor. The IRP/Resolution Professional will handover the assets and records of the Corporate Debtor to its Board of Director.”

13. It is clear from the above judgment that the financial creditor petition has been dismissed and at the time of passing the order, the AO had no any information about the NCLT order. The assessee is unable to show that the information was given to the jurisdictional assessing officer before passing the reassessment order Accordingly ground No.3 is rejected.

14. Ground Nos. 4 & 5 with regard to merits of the case regarding addition made by the AO on the basis of documents submitted with Punjab National Bank which were audited financial statements. The Id. FAA has restricted the addition to the tune of Rs.11.70 crores. During the course of reassessment proceedings the notices issued by the AO were not complied by the assessee properly and a letter was written to the AO which is incorporated by the AO in para No. 06 of his reassessment order. Accordingly with the consent of both the parties during the course of hearing, we remit the issue to the Assessing Officer for de novo consideration and fresh decision as per law. The assessee is directed to file necessary documents that would be essential and required for substantiating its case and for proper adjudication by the revenue authorities. Needless to say that reasonable opportunity of being heard be given to the assessee. The assessee is directed to cooperate with the proceedings for early disposal of the case and avoid to take unnecessary adjournments.

15. In the result, the appeal by the assessee is partly allowed for statistical purposes.

Pronounced in the open court on this 28th day of August, 2024.

Sd/-

(BEENA PILLAI)
JUDICIAL MEMBER

Sd/-

(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 28th August, 2024.

/Desai S Murthy /

Copy to:

1. Appellant
2. Respondent
3. Pr.CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.