

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "E", MUMBAI

BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER AND
SHRIGIRISH AGRAWAL, ACCOUNTANT MEMBER

I.T.A No.172/Mum/2024
(Assessment Year: 2012-13)

Majestic Infracon Private Limited, 7 th Floor, Resham Bhavan, Veer Nariman Road, Churchgate, Mumbai PAN : AACCT4160F	vs	DCIT-12(3)(2), Mumbai Aayakar Bhavan, MK Road Mumbai
APPELLANT		RESPONDENT

Assessee by : Shri None
Respondent by : Shri Biswanath Das - CITDR
Date of hearing : 29/08/2024
Date of pronouncement : 29/08/2024

ORDER

PER ANIKESH BANERJEE, J.M:

Instant appeal of the assessee was filed against the order of the Learned National Faceless Appeal Centre (NFAC), Delhi [for brevity, 'Ld.CIT(A)'] passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), for Assessment Year 2012-13, date of order 28.11.2023. The impugned order emanated from the order of the Learned Deputy Commissioner of Income-tax-2(3)(2), Mumbai, order

passed under section 143(3) read with section 263 of the Act, date of order 30/08/2017.

2. The assessee has taken the following grounds:-

"1. On the facts and in the circumstances of the appellant's case and in law, the Learned

Commissioner of Income Tax (Appeal) erred in passing ex-parte order.

2. On the facts and in the circumstances of the appellant's case and in law, the Ld. Commissioner of Income Tax (Appeals) erred in upholding AO's action of disallowing the expenditure incurred towards legal and professional fees of Rs 10,53,80,623/- without appreciating the facts of the Case.

3. On the facts and in the circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeal) erred in confirming AO's action of disallowing the expenditure incurred towards other miscellaneous expenses of Rs 3,15,07,838/- without appreciating the facts of the case

4. On the facts and in the circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeal) erred in confirming the disallowance made by the AO u/s 14A despite the fact that the issue has been resolved to the file of the AO dated 19.09.2018 in ITA No. 2717/Mum/2017.

5. The appellant craves leave to add to, alter, amend, modify and /or delete all or any of the foregoing grounds of appeal. The appellant prays before the Hon'ble Tribunal to delete the addition/s made by the AO and confirmed by the Ld. CIT(A)."

2. When the appeal is called for hearing, none was present on behalf of the assessee. The adjournment petition was filed but the reason for adjournment is not convincing. We reject the adjournment petition of assessee and proceed to dispose of the appeal ex parte qua for assessee after hearing the Ld.DR.

3. We heard the submission of the Ld.DR, considered the documents available in the record and perused the orders of the revenue authorities. The assessment was completed under section 143(3) / 263 of the Act with a disallowance of legal and professional expenses and other expenses amount to Rs.10,53,80,623/-, disallowance was for non deduction of TDS amount to Rs.3,51,07,838/- and disallowance under section 14A amount to Rs.2,96,31,065/-. Previously, the assessment was completed under section 143(3) with a disallowance under section 14A. The notice under section 263 was invoked and the assessment was completed under section 143(3) / 263 of the Act. The assessee filed the appeal before the Id. CIT(A). But the Ld.CIT(A) has passed the order *exparte qua* for assessee and confirmed the addition of the Ld.AO. The assessee has filed a paper book which is in the record. The assessee placed the order of the co-ordinate bench of ITAT, Mumbai in assessee's own case bearing **ITAs No.3710 & 3711/Mum/2019**, date of pronouncement **25/11/2022** for A.Y. 2013-14 and 2014-15. The coordinate bench of ITAT-Mumbai adjudicated the issue related to disallowance of expenses related to legal and professional expenses and was allowed in favour of the assessee. The Ld.CIT(A) has passed an *exparte* order and assessee was unable to appear before the Id. CIT(A). The reasonable opportunity for the assessee was denied and assessee should get another chance for submission of its documents. Accordingly, we remit the matter to the file of the Id. CIT(A) for further adjudication *de novo* considering the grounds of the assessee. We are not expressing our view about the merit of the case which will impair the appeal proceedings. Needless to say, the assessee should get a reasonable opportunity for hearing in set aside appeal proceedings. On the other hand, the assessee should be diligent and co-operative before the appellate authority.

4. In the result, the appeal of the assessee bearing **ITA No.172/Mum/2024** is allowed for statistical purposes.

Order pronounced in the open court on 29th day of August, 2024.

Sd/-

(GIRISH AGRAWAL)
ACCOUNTANT MEMBER
Mumbai, दिनांक/Dated: 29/08/2024
Pavanan

sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकरआयुक्त CIT
4. विभागीयप्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
5. गार्डफाइल/Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar), ITAT, Mumbai