

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

BEFORE SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER
SMT RENU JAUHRI, ACCOUNTANT MEMBER

ITA No. 2934/Mum/2024
Assessment Year : 2009-10

Jagmandri Finvest Pvt Ltd., Room No.1, 1 st Floor, Sharda Estate, Vazira Naka, Opp Bhoomi Heights, L T Road, Borivali West, Mumbai 400 092.		ITO Ward 9(2)(1) Mumbai
PAN AAACJ1542A (Appellant)		(Respondent)

Appellant by : Shri S G Goyal
Revenue by : Shri R R Makwana (Sr. DR)

Date of Hearing : 08.08.2024	Date of Pronouncement : 03.09.2024
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ORDER

Per Sandeep Singh Karhail, Judicial Member:

The present appeal has been filed by the assessee challenging the impugned order dated 27/09/2022 passed under section 250 of the Income Tax Act, 1961 ("the Act") by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, ["learned CIT(A)"], for the assessment year 2009-10.

2. In this appeal, the assessee has raised the following grounds: -

"Ground No 1 - On the facts and circumstances of the case and in law, the learned CIT(A) erred in upholding the fact that AO did not apply his independent mind in recording reasons for re-opening and has merely acted on the instructions issued by ADIT (Inv) - Unit 7(4), Mumbai to make additions.

Ground No 2-On the facts and circumstances of the case and in law, the learned CIT(A) failed to appreciate that approval accorded under Section 151 of the Act is mechanical in nature by simply stating "Yes, I am satisfied" rendering the re-assessment proceedings void- ab-initio.

Ground No 3 - On the facts and circumstances of the case and in law, the learned CIT(A) erred in making disallowance under Section 68 of the Income-tax Act, 1961 ('the Act') amounting to INR 4,59,39,969.

3.1 On the facts and circumstances of the case and in law, the learned CIT(A) erred in upholding the fact that while making additions under Section 68 of the Act, debit entries are also required to be considered as highlighted in the judgement of CIT v. Abdul Haseeb, Prop M.S.J.B. Silk [2014] 51 taxmann.com 48/[2015] 228 Taxman 471 (Mag.)(All.)

3.2 On the facts and circumstances of the case and in law, the learned CIT(A) failed to appreciate that bank statement is not books of the assessee as envisaged in the ruling of CIT v. Bhaichand H. Gandhi [1983] 141 ITR 67 (Bom.)

Ground No 4- On the facts and circumstances of the case and in law, the learned CIT(A) failed to appreciate that the assessee is an accommodation entry provider and hence the judgement of PCIT v. Alag Securities Pvt Ltd (ITA. 1512/2017) passed by the jurisdictional Hon'ble Bombay High Court, is squarely applicable and only 0.15% of INR 4,59,39,969 should be added back to income."

3. The present appeal is delayed by 548 days. Along with the appeal, the assessee has filed the affidavit sworn by the Director of the assessee

company, Shri Ramesh Dharamchand Agarwal, on 25/05/2024 seeking condonation of delay in filing the present appeal. In the said affidavit, the Director submitted that the impugned order passed by the learned CIT(A) was never served to the assessee at any point in time by email. It is further submitted that on 03/05/2024, its Chartered Accountant noticed the order issued by the learned CIT(A) on 27/09/2022 and advised the Director to prefer an appeal against the same. It is submitted that the company has no means to discharge its liability and is facing a stringency of funds and a liquidity crisis. In the affidavit, the Director submitted that he has not been keeping well since October 2022 and is bedridden at the advice of the medical experts. During the hearing, the learned AR submitted that the aforesaid Director expired on 03/06/2024, and in this regard furnished the death certificate issued by the Municipal Corporation.

4. We find that the reasons stated by the assessee for seeking condonation of delay fall within the parameters for grant of condonation laid down by the Hon'ble Supreme Court in the case of Collector Land Acquisition, Anantnag Vs. MST Katiji and others: 1987 SCR (2) 387. It is well established that rules of procedure are handmaid of justice. When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred. In the present case, the assessee did not stand to benefit from the late filing of the appeal. In view of the above and having perused the affidavit, we are

of the considered view that there exists sufficient cause for not filing the present appeal within the limitation period and therefore, we condone the delay in filing the appeal by the assessee and we proceed to decide the appeal on merits.

5. During the hearing, the learned Authorised Representative ("*learned AR*") wishes to argue grounds no. 3 and 4 raised in the assessee's appeal, which pertains to the addition made under section 68 of the Act.

6. The brief facts of the case pertaining to this issue are that for the year under consideration, the assessee filed its return of income on 30/09/2009 declaring a total income of Rs.1,72,039. The return filed by the assessee was processed under section 143(1) of the Act. Subsequently, on the basis of the information received from the Investigation Wing, Mumbai, reassessment proceedings under section 147 were initiated and notice under section 148 of the Act was issued on 31/03/2016. Subsequently, notice under section 142(1) of the Act was issued and served on the assessee. In response thereto, the assessee filed its objections against the reopening of the assessment, which were disposed off by the Assessing Officer ("*AO*"). Thereafter, statutory notices under section 143(2) as well as section 142(1) of the Act were issued to the assessee. However, there was no compliance on behalf of the assessee. Even the notice under section 274 r/w section 271(1)(b) of the Act was also issued to the assessee for non-compliance with the statutory

notices. However, in spite of various statutory notices issued, the assessee failed to comply with the same. Therefore, the AO had no option but to proceed to complete the assessment ex parte under section 144 r/w section 147 of the Act. Vide order dated 30/12/2016 passed under section 144 r/w section 147 of the Act, the AO treated the entire cash deposits amounting to Rs.4,59,39,969 as unexplained cash credit and added the same to the total income of the assessee under section 68 of the Act.

7. The learned CIT(A), vide impugned order, dismissed the appeal filed by the assessee, as the assessee failed to submit any written submission or documentary evidence in support of its claim despite multiple opportunities. Being aggrieved, the assessee is in appeal before us.

8. We have considered the submissions of both sides and perused the material available on record. In the present case, admittedly the assessee is an accommodation entry provider. During the hearing, the learned AR also confirmed this fact. Further, the assessee has failed to prove the source of the cash deposits in its bank account. The assessee has also failed to produce any of the creditors or provide details regarding their identity and whereabouts before the lower authorities despite multiple opportunities. The assessee has also not produced any confirmation regarding the alleged cash transaction. During the hearing, the learned AR relied upon the decision of the Hon'ble Jurisdictional High Court in PCIT vs Alag Securities Private Limited, [2020] 117 taxmann.com 292 (Bom.),

wherein the Hon'ble High Court, after noting that the cash amounts deposited by the customers had been accounted for in the assessment orders of these customers, upheld the consideration of 0.15% of the commission as income of the taxpayer. However, in the present case, the assessee could neither produce any of the beneficiaries nor produce any confirmation letter in support of the transaction.

9. It is pertinent to note that in the present case, the assessee has not provided any details regarding the amount of commission charged by it. The aforesaid decision is not in a context similar to the present case. As in the case cited supra before the Hon'ble Jurisdictional High Court, the cash deposits were already accounted for in the assessment orders of the beneficiaries. Though it can be accepted that in the case of accommodation entry provider, only commission can be considered as the taxable income, however, the rate of commission considered justifiable in other cases cannot be readily accepted in the present case, particularly when the assessee neither could prove the identity of the person from where the cash has been received nor could provide whereabouts of the beneficiaries to whom the money was transferred. In the absence of any material in support of such claim and in view of aforesaid findings, we deem it appropriate to direct the AO to consider 0.25% as the net profit rate/commission from the alleged accommodation entry transaction and to compute the taxable income accordingly. With the above directions, the

impugned order is set aside and grounds no.3 and 4 raised by the assessee are partly allowed.

10. Grounds no. 1 and 2 raised in assessee's appeal were not argued during the hearing. Accordingly, the said grounds are dismissed as not pressed.

11. In the result, the appeal by the assessee is partly allowed.

Order pronounced in the open court on 3rd September, 2024

Sd/-
(Renu Jauhri)
ACCOUNTANT MEMBER
Mumbai, Date : 3rd September, 2024.

Sd/-
(Sandeep Singh Karhail)
JUDICIAL MEMBER

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Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "SMC" Bench, Mumbai

By Order

(Assistant Registrar)
Income Tax Appellate Tribunal, Mumbai