

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “SMC”: NEW DELHI**

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No. 1458/DEL/2024
[Assessment Year: 2012-13]

Goyallmpex & Industries Limited, 1291, Sector-C, Pocket-1, Vasantkunj, New Delhi. PAN- AAACG 4105 D	<u>Vs</u>	Income-tax Officer, Ward 10(3), New Delhi
APPELLANT		RESPONDENT
Appellant by	Shri Ved Jain, Adv.; & Shri Aman Garg, CA	
Respondent by	Shri Sanjay Kumar, Sr. DR	
Date of hearing	20.08.2024	
Date of pronouncement	10.09.2024	

ORDER

PER KUL BHARAT, JM:

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, dated 20.1.2023, pertaining to the assessment year 2012-13. The assessee has raised following grounds of appeal:

“1. On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals), Income Tax Department (ITD) National Faceless Appeal Centre (NFAC) is bad both in the eye of law and on facts.

2. *On the facts and circumstances of the case, learned CIT(A), NFAC has erred, both on facts and in law, in confirming the order of the AO despite the fact that the same is null and void as the same has been passed in violation of CBDT Circular No. 19/2019 requiring mandatory DIN in the body of the assessment order.*
3. *On the facts and circumstances of the case, CIT(A), NFAC has erred both on facts and in law in passing the order ex-parte without giving assessee a proper and adequate opportunity of being heard in violation of principle of natural justice.*
4. *On the facts and circumstances of the case, the order passed by the learned CIT(A), NFAC is bad in the eyes of law and on facts as the same has been passed without giving any findings on the merits of the case.*
5. *On the facts and circumstances of the case, learned CIT(A), NFAC has erred both on facts and in law in confirming the order of the AO despite the fact that reopening the assessment under Section 147 of the Act and consequent reassessment without complying with the statutory conditions and the procedure prescribed under the law are bad and liable to be quashed.*
6. *On the facts and circumstances of the case, the learned CIT(A), NFAC has erred, both on facts and in law in confirming the order passed by the AO despite the fact that reopening the assessment proceedings as well as re-assessment order passed under section 148 of the Act are illegal, as the same have been made without assumption of valid jurisdiction.*
7. (i) *On the facts and circumstances of the case, learned CIT(A), NFAC has erred both on facts and in law in confirming the order of the AO despite the fact that the reasons recorded for reopening the assessment does not meet the requirements under section 147 of the Act, bad in law and are contrary to the facts.*

(ii) *That the learned CIT(A), NFAC has erred both on facts and in law in confirming the reopening ignoring the fact that there is no live nexus between the reasons recorded and the belief formed by the assessing officer.*
8. *On the facts and circumstances of the case, the learned CIT(A), NFAC has erred in confirming the action of the AO despite the fact that the order has been passed by the AO without disposing of the objections filed by the assessee against reopening of assessment proceedings.*

9. *On the facts and circumstances of the case, learned CIT(A), NFAC has erred both on facts and in law in confirming the reopening despite the fact that the same has been made by the AO on the basis of borrowed satisfaction without independent application of mind.*

10. *On the facts and circumstances of the case, the learned CIT(A), NFAC has erred, both on facts and in law, in confirming the order passed by the AO despite the fact that the reassessment proceedings initiated by the learned AO without obtaining valid prior approval of the prescribed authority as per section 151 of the Act is bad in law and liable to be quashed.*

11. *On the facts and circumstances of the case, the learned CIT(A), NFAC has erred, both on facts and in law, in rejecting the contention of the assessee that the notice issued under section 148 of the Act is bad, illegal and barred by limitation as the same has been issued beyond the time-limit prescribed under the Act.*

12. (i) *On the facts and circumstances of the case, the learned CIT(A), NFAC has erred, both on facts and in law in rejecting the contention of the assessee that the order passed by the AO is illegal and void-ab initio since reopening has been made on the basis of reasons without there being any whisper in the reasons recorded that the income has escaped due to the failure on part of the assessee to disclose fully and truly all material facts necessary for assessment, as the same has been reopened after a period of four years from the end of relevant assessment year and the assessment has already been made under Section 143(3).*

(ii) *That the CIT(A), NFAC has erred in upholding the action of the AO despite the fact that the order passed by learned AO is illegal and void ab initio, as the assessee had already disclosed fully and truly all material facts necessary for the assessment under Section 143(3).*

13. *On the facts and circumstances of the case, the learned CIT(A), NFAC has erred in upholding validity of reassessment proceedings, despite the same having been initiated on the basis of mere change of opinion, without any new tangible material/ information coming to the possession of the assessing officer subsequent to completion of assessment under section 143(3) of the Act.*

14. (i) *On the facts and circumstances of the case, learned CIT(A), NFAC has erred both on facts and in law in confirming the addition of Rs.*

25,47,400/- on account of share capital and share premium received from Vico International (Hong Kong) Ltd. invoking the provisions of Section 68 of the Income Tax Act.

(ii) That the addition has been confirmed rejecting the explanation and evidences brought on record by the assessee to prove the identity and creditworthiness of M/s Vico International (Hong Kong) Ltd. as well as the genuineness of the transaction submitted during the assessment proceedings.

15. On the facts and circumstances of the case, the learned CIT(A), NFAC has erred both on facts and in law in confirming the above addition despite that the same has been made by the AO on the basis of material collected at the back of the assessee without giving assessee an opportunity to rebut the same.

16. The appellant craves leave to add, amend or alter any of the grounds of appeal.”

2. Facts, in brief, are that for A.Y. 2012-13 case of the assessee was reopened on the basis of information received from FT & TR-V of the Income-tax Department that assessee company had received investment from foreign companies and had issued partly paid shares to two foreign investors, namely, M/s Vico International (HK) Limited and M/s Hans International FZE during F.Y. 2011-12 & 2012-13 relevant to A.Y. 2012-13 & 2013-14. The assessee had not taken prior approval from FIPB before receiving the payments from foreign companies and had issued partly paid shares. In response to notice issued u/s 148 of the Income-tax Act, 1961 (the “Act”), the assessee filed return at an income of Rs. 16,12,560/-. The AO completed the assessment u/s 147 of the Act at Rs. 41,59,960/- by adding Rs. 25,47,400/- on account of unexplained share application

money u/s 68 of the Act. Aggrieved against it the assessee preferred appeal before the learned CIT(A), who dismissed the appeal and affirmed the action of AO. Aggrieved against it the assessee is in appeal before this Tribunal.

3. Learned counsel for the assessee submitted that assessee had filed appeal before learned CIT(A) on bona fide grounds challenging the validity of reopening of the assessment itself. He submitted that without looking into the material facts available on record the learned CIT(Appeals) dismissed the appeal in limine, for want of prosecution, treating the appeal as not maintainable. He prayed that order of learned First Appellate Authority may be set aside and matter may be restored to his file for decision afresh on merit after affording adequate opportunity to the assessee of being heard.

4. On the other hand learned DR supported the order of learned First Appellate Authority.

5. I have heard rival submissions and perused the material available on record. A perusal of order passed by learned CIT(Appeals) would reveal that he has dismissed assessee's appeal, inter alia, by observing as under:

“4.1.1 Keeping in view the above facts of appellant's non-prosecution of this pending appeal and also placing reliance on above citations, appellant's appeal is to be treated as not maintainable. The approach of the assessee amply shows that it is not interested in prosecuting the appeal. Therefore,

having considered the entire facts of the case and evidence available on record, the appeal so filed is dismissed.”

5.1 Since the learned First Appellate Authority has dismissed assessee's appeal, in limine, without going into the merits of the case, to sub serve the interests of natural justice I hereby set aside the order of learned CIT(Appeals) and restore the matter back to his file to decide the appeal on merit after affording adequate opportunity of being heard to the assessee. Grounds are allowed for statistical purposes.

6. Assessee's appeal is allowed for statistical purposes.

Order pronounced in open court on 10th September, 2024.

**Sd/-
(KUL BHARAT)
JUDICIAL MEMBER**

MP

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI