

**IN THE INCOME TAX APPELLATE TRIBUNAL
“F” BENCH, MUMBAI**

**BEFORE MS PADMAVATHY S, AM &
SHRI SANDEEP SINGH KARHAIL, JM**

**I.T.A. No.3027/Mum/2024
(Assessment Year: 2014-15)**

Vision Infpro India Pvt. Ltd. Shop No.17, E Wing, Rizvi Park Co-operative HSG Soc. S.V. Road, Santacruz (W), Mumbai-400054. PAN : AABCV2261N	Vs.	Dy. CIT-8(3)(2), Room No. 615, Aayakar Bhavan, M.K. Road, Mumbai-400020.
Appellant)	:	Respondent)

Appellant / Assessee by : Shri Nishit Gandhi, AR

Revenue / Respondent by : Shri Surendra Meena, Sr. DR

Date of Hearing : 29.08.2024

Date of Pronouncement : 02.09.2024

ORDER

Per Padmavathy S, AM:

This appeal by the assessee is against the order of Commissioner of Income Tax (Appeals) / National Faceless Appeal Centre (NFAC), Delhi [in short 'the CIT(A)'] dated 21.02.2024 for Assessment Year (AY) 2014-15. The assessee is contending the following issues through various grounds of appeal:

- (i) That the order of CIT(A) is in violation of principles of natural justice – Ground No. 1.1 to 1.3
- (ii) That the CIT(A) erred in upholding the order of the AO which itself is without jurisdiction – Ground No. 2.1 & 2.2.

- (iii) That the CIT(A) is not correct in confirming the addition made under section 56(2)(viib) – Ground No. 3.1 to 3.3.
- (iv) Levy of interest under section 234B & 234C – Ground No.4.1.
- (v) General – Ground No.5.

2. The assessee is a company and filed the return of income for AY 2014-15 on 12.11.2014 declaring a total income of Rs. 2,37,85,720/-. The case was selected for scrutiny and statutory notices were duly served on the assessee. The Assessing Officer (AO) completed the assessment by making additions towards tax expenses amounting to Rs. 1,14,29,807/- and towards share premium of Rs. 24,35,98,000/-. Aggrieved the assessee preferred appeal before the CIT(A). The CIT(A) dismissed the appeal ex-parte stating that the assessee did not respond to the various notices issued by the CIT(A). The relevant observations of the CIT(A) in this regard are extracted below:

“4. Against the order of the A.O. u/s 143(3) of the Act, the appellant has filed this appeal. Notices u/s 250 of the Act were issued to the appellant electronically in E- proceeding/ITBA facility. It has been noted from the appeal record that the appellant was given ample opportunities to present the case by way of submission of details along with supporting documents and evidences. Details of opportunities given to the assessee are as follows:

S No.	HEARING NOTICE DATED	HEARING DATE	REMARKS
1.	Notice dated 20.07.2018	10.08.2018	No compliance
2.	Notice dated 23.12.2020	07.01.2021	No compliance
3.	Notice dated 11.10.2021	18.10.2021	No compliance
4.	Notice dated 01.07.2022	07.07.2022	No compliance
5.	Notice dated 20.09.2022	26.09.2022	No compliance
6.	Notice dated 22.02.2023	28.02.2023	No compliance
7.	Notice dated 14.02.2024	16.02.2024	No compliance

4.2 There were no compliance to notices which were sent on the email id mentioned in Form No.35 filed by the appellant. Despite given repeated

opportunities of being heard, there has been no compliance to the notices. It is apparent that the appellant is not interested in pursuing his appeal. In the absence of any submission from the appellant, the grounds of appeal are decided on merits on the basis of facts available on record.

4.3 It has been held by the Hon'ble Supreme Court in the case of B.N. Bhattacharjee and another (118 ITR 461) (at pages 477 & 478) that appeal does not mean filing of memo of appeal but also pursuing it effectively. In cases where the appellant does not want to pursue the appeal, appellate authorities have inherent power to dismiss the appeal for non-prosecution as held by the Hon'ble Bombay High Court in the case of M/s Chemipolys. Union of India in Excise Appeal No. 62 of 2009.

DECISION

5. During the appellate proceedings, the appellant has only submitted submission in the form of 'Statement of Facts'. After that neither he has replied to hearing notices nor submitted any documentary evidence/information to prove his side. Sufficient and adequate opportunities were afforded to the appellant as indicated at table at para No. 4. No reply whatsoever has been submitted by the appellant. It can be safely presumed that the appellant is not interested in pursuing his appeal. Therefore, the undersigned sees no reason to interfere with the orders of the Assessing Officer. Thus, the ground of appeal raised by the appellant is dismissed.”

3. Aggrieved, the assessee is in appeal before the Tribunal. There is a delay of 39 days in filing the appeal before the Tribunal. The assessee filed a condonation petition in this regard. Having heard both the parties and perused the material on record, we are of the view that there is a reasonable and sufficient cause for the delay in filing the appeal before the Tribunal. Therefore following the Hon'ble Supreme Court decision in the case of Collector, Land Acquisition Vs. MST.Katiji & Ors., (167 ITR 471) (SC) we condone the delay of 39 days in filing the appeal and admit the appeal for adjudication.

4. The ld. AR submitted that both the AO and the CIT(A) did not give sufficient opportunity to the assessee to present the case on merits. The ld. AR

submitted that the assessee has submitted all the relevant details before the AO (Page 31 to 80 of Paper Book) and that the AO has not properly appreciated the details furnished while making the impugned additions. The ld. AR further submitted that the initially the appeal was manual hearing during which time the assessee has once again filed the details before the CIT(A)-14, Mumbai (Page 81 to 105 of Paper Book). The ld AR also submitted that later when appeal was transferred to NFAC none of the details submitted earlier have been considered and that NFAC has passed the appellate order stating that the assessee has not complied with various notices. The ld AR brought to our attention the letter filed before the CIT(A) on 06.10.2017, contending that the AO has not given the proper opportunity of being heard to the assessee by passing the on 15.11.2016 when the time limit for assessment completion was available till 31.12.2016. Accordingly the ld. AR prayed that since proper opportunity of being heard was not given by the lower authorities one more opportunity may be given to the assessee to content the issue on merits.

5. The ld. DR on the other hand submitted that assessee has not responded to seven notices issued by the CIT(A)/NFAC and accordingly the CIT(A) has confirmed the addition. The ld. DR therefore, supported the order of the CIT(A).

6. We heard the parties and perused the material on record. We notice that the assessee's case was before the CIT(A) for physical hearing and that the assessee has filed the detailed written submissions (page 81 to 105 of paper book. From the perusal of records, it is also noticed that the appeal when migrated to faceless proceedings fresh notices were issued which the assessee could not respond since the emails were sent the email Id of the Chartered Account (CA) and that the CA has not responded. We also notice that in appellate proceedings by NFAC the

written submissions made by the assessee earlier have not been considered and the appeal is dismissed ex-parte for the reason that the assessee has not responded to the notices. Further we notice that proper opportunity was not given to the assessee before the AO also which is substantiated by the submissions by the assessee before the CIT(A) the relevant portion of which is extracted below –

“The Appellant is a company registered under the Companies Act, 1956. For the relevant assessment year the Appellant filed a return of income u/s 139 (1) declaring an income of Rs.2,37,85,720/-. The Appellant regularly files its return of income. The Appellant's case got picked up for scrutiny for the relevant assessment year. The case was represented by the regular Chartered Accountant of the Appellant Company, Mr. Vinod Agarwal [“the AR” for short]. During the course of assessment various details were called for by the learned Deputy Commissioner of Income Tax-8 (3) (2), Mumbai [“the AO” for short] from time to time. As noted by the AO herself, the AR of the Appellant attended and filed various details from time to time as called for by her. However, a Show Cause Notice dated 07.11.2016 was issued by the AO whereby certain details were called for by the AO from the Appellant. The said notice itself acknowledged that the limitation period for passing the assessment order expires on 31.12.2016 i.e. after almost two months. The said notice was received by the Appellant on 10.11.2016 fixing the date for hearing on 11.11.2016. The said notice was communicated to the AR on 11.11.2016. However, on 11.11.2016 the AR was travelling out of Mumbai and therefore the said notice remained to be complied with on 11.11.2016. The next two days i.e. 12.11.2016 & 13.11.2016 were closed holidays for the Department being Saturday and Sunday. On 14.11.2016 the AR could not return back to Mumbai due to certain compelling circumstances. It is also a known fact that the Central Government had issued the Demonetization Ordinance on 08.11.2016. As such the whole nation was in the grip of the severe tensions and panic created by the said ordinance. Moreover, the AR being a Chartered Accountant was under all the more pressure of all his clients who were eager to understand the implications of the said Ordinance on their business big or small. Despite such panicky and tensed situation when the AR returned back on 15.11.2016 he immediately contacted the office of the AO at 12 noon asking as to when could he attend in order to comply with the notice dated 07.11.2016. To this, it was stated from the office of the AO that the order u/s 143 (3) of the Income Tax Act, 1961 (“the Act” for short) in the case of the Appellant had already been passed. In the said order an addition of Rs. 24,35,98,000/- was made u/s 56(2)(viib) on account of premium on shares issued by the Appellant during the relevant year. Ultimately the assessment

*was framed at a figure more than 10 times of the returned income. Against the said assessment the Appellant has filed the present appeal. *****”*

7. Considering the above facts and in the interest of natural justice, we are inclined to give one more opportunity to the assessee to present the case properly on merits before the lower authority. Accordingly, we restore the appeal back to the AO for consideration afresh. The assessee is directed to file the necessary details as may be call for by the AO and co-operate with the assessment proceedings. It is ordered accordingly.

8. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 02-09-2024.

Sd/-
(SANDEEP SINGH KARHAIL)
Judicial Member

**SK, Sr. PS*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

Sd/-
(PADMAVATHY S)
Accountant Member

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai