

IN THE INCOME TAX APPELLATE TRIBUNAL, "E" BENCH
MUMBAI
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

ITA No. 4129/MUM/2024
(A.Y.2010-11)

M/s Tayani Holdings Pvt Ltd 285, Park View Bhiwanji Arjan Khimji Marg, Central Railway, Matunga, Mumbai - 400019.	Vs.	ITO- 8(3)(1), R.No.616, Aayakar Bhavan, M.K.Road, Mumbai.400020.
PAN/GIR No. AADCT3311K		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

Appellant by	Ms. Sanjukuta Samantara.AR
Revenue by	Shri Ganesh Rakh.Sr. DR

सुनवाई की तारीख/Date of Hearing	30.09.2024
घोषणा की तारीख/Date of Pronouncement	01.10.2024

ORDER

PER PAVAN KUMAR GADALE, JM:

The appeal is filed by the assessee against the order of National Faceless Appeal Centre, Delhi / CIT(A), Mumbai passed u/sec 143(3) r.w.s 147 and u/sec 250 of the Act.

2. At the time of hearing, the Ld.AR of the assessee submitted that there is a delay in filing the appeal before the Hon'ble Tribunal and the assessee has filed the affidavit for condonation of delay. Whereas, the facts mentioned in the affidavit are reasonable and the Ld. DR has no specific

objections. Accordingly, we condone the delay and admit the appeal. The assessee has raised the following grounds of appeal:

1. Dismissal of Appeal in limine not justified:

- i) The Id. CIT(A) erred in dismissing the appeal in limine without appreciating that entire relevant appeal papers had been duly filed and examined to allot the appeal number within the meaning of Sec.246A and non-examination of paper to treat it as infructuous to the prejudice of the Appellant; therefore, the Order impugned may be vacated.*

- ii) The Id. CIT(A) further failed to take cognizance of submissions and evidences.*

2. Failure of Natural Justice:

- i) The lower authorities erred in passing the Orders on the failure of equity and due justice and non-consideration of material facts and submissions had vitiated the proceeding; therefore, on the facts and circumstances, the matter deserves to be set-aside to the Assessing officer.*

- ii) The Id. CIT(A) failed to appreciate that in a proceeding, relying upon 3rd statement /or party evidences (if any) does not support the cause of Revenue on the failure of equity, therefore, may be set-aside to the files of the Assessing officer*

TECHNICAL GROUND: Failure of jurisdictional tests

3. Notice u/s. 148 beyond limitation period borrowed information without individual satisfaction Defective jurisdiction not curable u/s. 292BB Order impugned may be vacated.

The Id. CIT(A) erred in not appreciating that when on the face of it, there is failure of jurisdictional tests, the entire re-assessment proceeding is vitiated for want of proper legal

sanction and consequently, the Order impugned may be quashed for the following reasons:

(a) that the notice u/s. 148 dated 30.03.2017 is statedly served beyond period of limitation; therefore, the reopening is not justified.

(b) that the Report of the ADIT(Inv) qua reasons is not a valid information since not coming out of Assessing Officer's own volition but the same were based on borrowed facts without any individual application of mind and lack the satisfaction,

(c) that section 148 cannot substitute section 153C; as the present case is the outcome of a search action of a 3 party.

consequently, as serious failure at the root level becomes non-curable defect u/s.292BB; the notice and the Order impugned may be quashed

MERITS:

4. Addition u/s. 68 alleged unexplained credit on account of Share Application Money, Share Capital and Loans amounting to Rs.5,98,35,000/-.

(a) The Id. CIT(A) erred in confirming the addition u/s. 68 on account of share capital, share application money and unsecured loans without appreciating that the Appellant had duly discharged its primary onus including few parties responding to notices u/s.133(6); therefore, deemed addition as Rs.5,98,35,000/-out of Capital Account is uncalled for and the same may be deleted.

(b) Without prejudice to above, the first proviso to Section 68 is not applicable to the Appellant as it had provided the imitate sources and net the source of the source notwithstanding that few parties had been refunded their funds in subsequent years; hence no addition is called for.

(c) Without further prejudice to above, as the parties are not related parties within the meaning of Section 40A(2)(b) and

where ROC details indicate the genuineness, no addition u/s. 68 on the basis of third parties' general statements is uncalled for and the same may be deleted.

(d) Without further prejudice, interest paid (Less TDS) to loan creditors had been accepted by the Assessing Officer which further substantiates the genuineness of transactions.

5. Without prejudice to above, the production of parties were beyond the capability of the Appellant.

6. Levy of penal interest u/s. 234A, 234B and 234C The Appellant, on merits, denies its liability to penal interest.

7. The Appellant craves leave to add, amend or alter all or any of the above Grounds of Appeal..

3. The brief facts of the case are that, the assessee company is engaged in the business and has filed the return of income for the A.Y 2010-11 on 22.09.2011 disclosing a total income of Rs. Nil and the return of income was processed u/s 143(1) of the Act. Subsequently the Assessing Officer (A.O) has received information from DGIT, CC2(2) Mumbai that the assessee was engaged in obtaining the accommodation entries from M/s. Shree Ganesh Spinners Ltd, one of the group company of Shri Shirish C Shah, who are engaged in providing bogus accommodation entries and the assessee is one of the beneficiary. Therefore, the AO has reason to believe that the income has escaped assessment and issued notice u/sec 148 of the Act. In compliance to notice, the assessee has filed a letter to treat the return of income filed on 22.09.2011 as due compliance. The assessee has filed the objections for reopening of assessment on 01.09.2017. The AO has considered the

facts and dealt on the objections and disposed off on 04.09.2017. Further the AO on perusal of the financial statements found that the assessee has received share application money of Rs. 3.03.35.000/- including Rs.25,00,000 from M/s. Shree Ganesh Spinners Ltd and Rs.2,95,00,000/- as unsecured loans from others. In response to notice u/sec 142(1) of the Act, the Ld. AR of the assessee appeared from time to time and submitted the details and the case was discussed. The A.O has issued notice to the assessee to explain the sources and genuineness, creditworthiness and identity of the share application investors and unsecured loan creditors. Whereas the assessee has furnished the submissions/details The AO has called for the additional details of the parties and the nature of the transactions and also issued notice u/sec 133(6) of the Act on the parties and the notices were not properly complied. Finally the A.O observed that the identity, creditworthiness and genuineness of transactions could not be proved and therefore the share application money and unsecured loans received by the assessee has to be treated as unexplained credit u/sec 68 of the Act. Finally the A.O. was not satisfied with the evidences and relied on the decisions and treated the share application money and unsecured loans as unexplained cash credit u/s 68 of the Act and assessed the total income of Rs.5,98,35,000/- and passed order u/sec 143(3) r.w.s 147 of the Act dated 28-12-2017.

4. Aggrieved by the order, the assessee has filed an appeal before the CIT(A), whereas the CIT(A) has considered the grounds of appeal, statement of facts and findings of the AO and has issued notices of hearing and since there was no compliance by the assessee to notices. Therefore the CIT(A) considering the information on record has confirmed the action of the A.O and dismissed the appeal. Aggrieved by the order of the CIT(A), the assessee has filed an appeal before the Hon'ble Tribunal.

5. At the time of hearing, the Ld. AR submitted that the CIT(A) has erred in confirming the additions by the AO overlooking the factual information and submissions of the assessment proceedings. Further the Ld.AR submitted that the assessee has a good case on merits and has filed an application for admission of the additional evidence under Rule 29 of ITAT rules and prayed for admission of additional evidence and substantiated the submissions with the factual paper book.. Per Contra, the Ld. DR submitted that the transactions are not established with evidences before the lower authorities and the Ld.DR supported the order of the CIT(A).

6. We heard the rival submissions and perused the material on record. The sole crux of the disputed issue that the CIT(A) has erred in passing the ex parte order confirming the additions by the A.O. as the transactions are not supported with the documentary evidences. The Ld.AR emphasized that the assessee is filling the

application for admission of additional evidences under Rule 29 of ITAT rules to substantiate the share application money and unsecured loans which were not available earlier and could not produce before the lower authorities. Further the evidences play a important role in decision making in the adjudicating proceedings. Therefore considering the facts, circumstances and additional evidences, the assessee should not suffer for non filing of material information, as the evidences played vital role in decision making and we admit the additional evidence. Further we find The CIT(A) has issued the notices of hearing referred at Page 3 Para5.1 of the order but there was no proper response in spite of providing adequate opportunity of hearing on various dates and thus the Ld.CIT(A) came to a conclusion that the assessee is not interested and decided the appeal based on the information available on record. Whereas the assessee has raised grounds of appeal challenging the additions made by the A.O and there could be various reasons for non appearance which cannot be overruled. Therefore, considering the facts and principles of natural justice, we shall provide with one more opportunity of hearing to the assessee to substantiate the case with evidences and information subject to payment of cost of Rs.10,000/- to the Income Tax Department within one month from the date of receipt of the order and produce the proof of payment. Accordingly, we set aside the order of the CIT(A) and remit the entire disputed issues along with the additional

evidences to the file of the CIT(A) to adjudicate afresh and the assessee should be provided adequate opportunity of hearing and shall cooperate in submitting the information for early disposal of the appeal. And we allow the grounds of appeal of the assessee for statistical purposes.

7. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 01.10.2024.

Sd/-
(GIRISH AGRAWAL)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated: 01/10/2024

KRK

Copy of the Order forwarded to:

1. The Appellant,
2. The Respondent
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,
(Dy./Asstt. Registrar)ITAT,
Mumbai.