

IN THE INCOME TAX APPELLATE TRIBUNAL  
“E” BENCH, MUMBAI

BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &  
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER  
ITA No. 4016/Mum/2024

(A.Y: 2017-18)

Killick Nixon Ltd, Basement, Commercial Union House 9, Wallace Street, Fort, Mumbai-400001.	Vs.	ACIT, Circle 10(1)(2) Aayakar Bhavan, M.K.Road, Mumbai-400020.
PAN/GIR No. : AAACK8526A		
Appellant	..	Respondent

Appellant by :	Shri.K.Gopal & Ms Neha Paranjpe.AR
Respondent by :	Shri B.B. Nagawe.Sr. DR

Date of Hearing	24.09.2024
Date of Pronouncement	25.09.2024

आदेश / O R D E R

**PER PAVAN KUMAR GADALE, JM:**

The appeal is filed by the assessee against the order National Faceless Appeal Centre,(NFAC) Delhi / CIT(A) passed u/sec 144 and u/sec 250 of the Income Tax Act, 1961.

2. At the time of hearing, the Ld.AR submitted that there is a delay of 136 days in filing the appeal before the Hon’ble Tribunal and the assessee has filed an affidavit for condonation of delay. Whereas,

- 2 -

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.The Learned CIT Appeals has erred in confirming assessment order passed u/s 144.*

*2. The Learned CIT Appeals has not given proper opportunity.*

*3. The Learned CIT Appeals has erred in confirming addition Rs. 1,95,10,783/- as a Cash deposit as deemed as unexplained money u/s 69 A of the Income Tax Act, 1961.*

*4. The Learned CIT Appeals has erred in confirming assessing the income of Rs. 1,95,10,753/-u/s115 BBE at the rate of 60 percent.*

*5. The Learned CIT Appeals has erred in confirming addition the amount of Rs. 1,26,67,319/- u/s 41(1)of the Income Tax Act 1961, by treating the same as cessation of liability.*

*6. The Learned CIT Appeals has erred in confirming addition of Rs. 71,31,977/- as income due to difference in AIR reconciliation.*

*7. The Learned CIT Appeals has erred in confirming addition Rs. 45,940/- as difference of receipts as service tax is not paid before due date.*

*8. The Learned CIT Appeals has erred in confirming not setting off loss of carried forward loss for AY 10-11 Rs. 1,03,98,293/- and AY 11-12 Rs. 80,80,410/- AY 2012-13 Rs.28,71,483/-*

*9. The Learned CIT Appeals has erred in confirming initiating of penalty u/s 271 AAC and 270 A of the Income Tax Act*

- 3 -

*10. The appellant reserves the right to add, alter, modify, delete any grounds of appeal..”*

3. The brief facts of the case are that, the assessee company is engaged in the business of trading and marketing of paints. The assessee has filed the return of income for the A.Y 2017-18 on 31.10.2017 disclosing a total income of Rs. Nil after set off of brought forward losses. Whereas the assessee has filed revised return of income on 12.10.2018 disclosing a total income of Rs. Nil and the return of income was processed u/s 143(1) of the Act. Subsequently the case was selected for scrutiny under CASS and notice u/sec 143(2) and u/sec 142(1) of the Act are issued. In compliance to notice, the assessee has submitted the details through ITBA portal. The Assessing Officer (AO) found that the assessee has made cash deposits into bank account and the assessee was asked to produce the details of cash deposits along with the supporting sources. Whereas the assessee has not furnished the details and the AO has invoked the provisions of section 69A of the Act and made addition of Rs. 1,95,10,783/-. On the second disputed issue, the AO perusal of balance

**- 4 -**

sheet found out standing sundry creditors balance of Rs.1,99,87,989/- and called for the various information and details. Since the assessee could not substantiate with the information, the AO has invoked the provisions of Sec. 41(1) of the Act and made addition of Rs. 1,26,67,319/-. On the last disputed issue, the AO found that there is no reconciliation of contract income as per AIR to the extent of Rs.71,77,917/- and was treated as income of the assessee. Finally the AO has assessed the total income of Rs.4.51.70.450/- and passed the order u/sec 144 of the Act dated 20.12.2019.

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 -**

5. At the time of hearing, the Ld.AR submitted that the CIT(A) has erred in confirming the action of the Assessing officer overlooking the information of the assessment proceedings. Further the assessee has a good case on merits and shall substantiate with the material evidences and prayed for an opportunity to explain before the lower authorities. Per Contra, the Ld. DR supported the order of the CIT(A).

6. We heard the rival submissions and perused the material on record. Prima-facie the CIT(A) has passed the order considering the fact that there is no compliance nor appearance in spite of providing adequate opportunity of hearing and the notices were issued. Therefore, the CIT(A) was of the opinion that the assessee is not interested in prosecuting the appeal and dismissed the appeal ex-parte confirming the action of the assessing officer. The CIT(A) has issued the notices of hearing referred at Page 3 Para4.1 of the order but there was no proper response 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

- 6 -

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.5000/- 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 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 25.09.2024

Sd/-  
(GIRISH AGRAWAL)  
**ACCOUNTANT MEMBER**

Sd/-  
(PAVAN KUMAR GADALE)  
**JUDICIAL MEMBER**

Mumbai, Dated 25.09.2024

KRK, PS

आदेश की प्रतिलिपि अग्रेषित/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.

सत्यापित प्रति //True Copy//

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आदेशानुसार/ BY ORDER,

( Asst. Registrar)  
ITAT, Mumbai