

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "G", MUMBAI**

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER
AND SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA No.432/Mum/2023
Assessment Year: 2014-15**

Sahib Warehousing and Logistics, 8/A, Chagpur Khimji Building, R.R.T. Road, Mulund West, Mumbai -400 080, Maharshtra. PAN: ABKFS1797F	Vs.	CIT(A), NFAC, Delhi.
(Appellant)		(Respondent)

Assessee by : Shri Neelkanth Khandelwal
Revenue by : Shri Kishore Dhule, CIT-DR

Date of Hearing : 15.10.2024
Date of Pronouncement : 16.10.2024

ORDER

PER AMARJIT SINGH, ACCOUNTANT MEMBER:

This appeal of the assessee for the assessment year 2014-15 is directed against the order u/s 250 of the Income-tax Act, 1961 dated 15.12.2022 passed by the Id. Commissioner of Income-tax (Appeal), National Faceless Appeal Centre, Delhi.

2. The grounds raised in the appeal read as under:-

"The Hon'ble Commissioner of Income-tax (Appeals), NFAC, Delhi (hereinafter referred to as the Hon'ble CIT-(A)) erred in passing order u/s 250 of the Act, by assessing the total income at Rs.92,03,260/- for AY 2014-15.

The Hon'ble CIT-(A) failed to consider the explanations and submissions offered by the appellants during the course of faceless appellate proceedings.

The appellants contend that the Hon'ble CIT-(A) ought not to have framed the impugned order under section 250 inasmuch as the Hon'ble CIT-(A) has not appreciated the facts of the case in its entirety.

The appellants further, contend that on the facts and in the circumstances of the case and in law, the Hon'ble CIT-(A) ought not to have reached the proper conclusions inasmuch as the ITAT, "E" Bench, Mumbai after having been satisfied on the basis of all explanations and documents that have been furnished, has allowed the relief on similar facts vide MA order No.573/M/2018 passed on 07.01.2009 arising out of ITA No.6297/M/2017 to the appellants in its own case for concerned assessment year.

The appellants crave leave to add to, alter and/ or amend the aforestated grounds appeal.”

3. Facts in brief are that the return of income declaring the total income of Rs.45,35,711/- was filed on 29th September, 2009. The assessment u/s 143(3) of the Act was made on 17th May, 2016 assessing the total income at Rs.47,32,960/-. Subsequently, the Id. PCIT has passed order u/s 263 of the Act on 14th September, 2017 and set aside the order passed on 17th May, 2016 to the file of the Assessing Officer by treating the same as erroneous in so far as it is prejudicial to the interest of the Revenue. Consequently, the AO had passed assessment order u/s 143 r.w.s. 263 of the Act on 18th January, 2018 and the total income of the assessee was assessed at Rs.92,03,260/- by disallowing the entire business loss including the interest on capitals to the partners u/s 40(b) of the Act amounting to Rs.41,94,992/- and other expenses amounting to Rs.4,72,560/-. The Id. CIT(A) sustained the disallowance made by the AO. During the course of appellate proceedings before us,

at the outset, the ld. Counsel submitted that the ITAT, Mumbai, vide ITA No.6297/Mum/2017 dated 31st May, 2018, partly allowed the appeal of the assessee. However, after filing a Miscellaneous Application by the assessee, the ITAT, vide order dated 7th January, 2019 has quashed the 263 order passed by the ld.PCIT. The ld. Counsel submitted that all these facts were brought to the notice of the ld.CIT(A). However, the ld.CIT(A) has not considered these facts before sustaining the disallowance made by the AO.

4. The ld. DR relied on the orders of the lower authorities.

5. Heard both the sides and perused the material on record. Without reiterating the facts as discussed supra in this order, it is an undisputed fact that in the case of the assessee, the order passed u/s 263 of the Act has been set aside by the ITAT. However, without considering this material fact, the ld.CIT(A) has dismissed the appeal filed by the assessee. In this regard, we have perused the order of the ITAT vide MA order No.573/M/2018 arising out of ITA No.6297/M/2017, dated 7th January, 2019 holding that there was no merit in the order passed u/s 263 of the Act and, therefore, the same was set aside.

6. In the light of the above facts and circumstances, we consider the decision of the ld.CIT(A) in dismissing the appeal of the assessee not justified since the section 263 order on the basis of which the assessment was framed had already been set aside/quashed by the ITAT, Mumbai as discussed, supra in this order. Therefore, all the grounds of appeal filed by the assessee are allowed.

7. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 16.10.2024.

Sd/-

(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER

Mumbai, Dated: 16.10.2024

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Copy to:

1. The Appellant:
2. The Respondent:
3. The CIT,
4. The DR

//True Copy//

Sd/-

(AMARJIT SINGH)
ACCOUNTANT MEMBER

By Order

Assistant Registrar
ITAT, Mumbai Benches, Mumbai