

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "D" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
MS. KAVITHA RAJAGOPAL (JUDICIAL MEMBER)**

**ITA No. 2574/MUM/2024
Assessment Year: 2018-19**

DCIT-14(1)(1),
Room No. 432, 4th floor, Aayakar
Bhavan, M.K. Road,
Mumbai-400020.

Appellant

Vs. M/s Maharashtra State Electricity
Distribution Co. Ltd.,
63 B/C, Govt. Industrial Estate,
Charkop, Kandivali,
Mumbai-400067.
PAN NO. AAECM 2933 K
Respondent

Assessee by : Mr. Ketan Ved
Revenue by : Mrs. Sanyogita Nagpal, CIT-DR

Date of Hearing : 16/10/2024
Date of pronouncement : 17/10/2024

ORDER

PER OM PRAKASH KANT, AM

This appeal by the Revenue is directed against order dated 26.03.2024 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment year 2018-19, raising following grounds:

1) Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in holding that the order passed by the AO is in



violation of the principles of natural justice even though ample opportunities were given to the assessee through issue of notices u/s 143(2), 142(1) and show cause notice and to which the assessee also responded but failed to comply fully with the requirements of the said notices.

2) Whether on the facts and circumstances of the case, the id. CIT(A) erred in allowing the appeal of the assessee without discussing the merits of the case.

3) The appellant prays that the order of the CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored

2. Briefly stated, facts of the case are that the assessee filed return of income for the year under consideration on 30.10.2018 declaring total loss of Rs.31,65,89,37,504/-. Thereafter the assessee revised its return of income though keeping total loss which was declared in the original return of income. The return of income filed by the assessee was selected for scrutiny assessment and statutory notices u/s 143(2) of the Income-tax Act, 1961 (in short 'the Act') was issued and served upon the assessee. Subsequently, the Assessing Officer issued notice u/s 142(1) of the Act on 11.12.2020 and served upon the e-mail ID provided for the purpose of communication i.e. cgmca@mahadiscom.in and cao_cadiscom1@rediffmail.com. The assessee made part compliance of the queries raised under said notice. Thereafter, the Assessing Officer issued another notice u/s 142(1) of the Act on 16.09.2021. However, same was served on e-mail namely seosmanabad@mahadiscom.in. Thereafter, the Assessing Officer issued show cause notice dated 21.09.2021 also on the e-mail ID seosmanabad@mahadiscom.in due to non-compliance on the part



of the Assessing Officer computed the income of the assessee observing as under:

“8. Show Cause Notice along with Draft Assessment Order was issued to Assessee on 21.09.2021 but Assessee has not replied to the same despite sufficient opportunities and subject to the above remarks and on basis of data made available on record, the total income of the assessee is determined as under:

Total Loss declared in ITR	Rs.	31,65,89,37,504/-
Add:		
Addition of any other amount allowed as deduction in Schedule BP of return as per para 4	Rs.	5655,86,61,81 21-
Addition u/s 69C of the Act as per para 5	Rs.	5,26,35,674/-
Addition of excess contribution to recognised provident fund as per para 6	Rs.	80,40,70,486/-
Addition u/s 56(2)(x) as per para 7	Rs.	69,97,000/-
Gross Total Income	Rs.	2576,34,27,468/-

3. On further appeal, the Ld. CIT(A) however quashed the assessment order holding that the notice u/s 142(1) dated 16.09.2021 show cause notice dated 21.09.2021 were issued on e-mail ID which was not provided by the assessee for the purpose of communication and therefore, the queries/show cause notice issued could not be served upon the assessee. The Ld. CIT(A) held that no meaningful opportunity was afforded to the assessee which is a clear violation of the principle of natural justice and accordingly he quashed the assessment order as bad in law.

4. Aggrieved the Revenue is in appeal before the Tribunal by way of raising grounds as reproduced above.



5. We have heard rival submission of the parties and perused the relevant material on record. The Ld. CIT(A) has quashed the assessment order observing as under:

5. Observation and Decision:

In ground No. 1, the Appellant has contested the order u/s 143(3) r.w.s. 144B of the IT Act, 1961 dated 26/09/2021 for the A.Y. 2018-19 of the AO by holding that the order has been passed in violation of the principles of natural Justice.

I have carefully considered the submissions made by the Appellant. It is observed that the AO issued notice u/s 143(2) of the IT Act, 1961 on 22/09/2019. Thereafter notice u/s 142(1) was issued on 11/12/2020 calling for specific details in response to which the Appellant filed the requisite information. Thereafter show cause notice along with Draft Assessment Order was issued to the Appellant on 21-09-2021 fixing the case for hearing on 25-09-2021. It is observed that the notices were sent to the email id seosmanabad@mahadiscom.in which is not the official email id of the Appellant. The email ids reported in the ROl are cmca@mahadiscom.in and cao cadiscom1@rediffmail.com. The postal Address given by the Appellant in the ROl is Bandra East, Mumbai but the Postal Address mentioned by the AO is Solapur Road, Tuljapur. It is also observed that the notice u/s 143(2) was issued on 22/09/2019. After a long gap of 14 months, notice u/s 142(1) was issued on 11/12/2020 which was complied upon by the Appellant. Thereafter, after a long gap of 9 months, show cause notice was issued on 21-09-2021 giving only four days time to the Appellant to file its response and the assessment order was hurriedly passed on 26-09-2021. The notices were sent to the wrong email id and not the registered email ids. The postal address mentioned by the AO is also not the postal address mentioned by the Appellant in its ROl. There is a gap of 14 months between the issue of 143(2) notice and the issue of 142(1) notice. There is again a gap of 9 months from the issue of 142(1) notice and issue of show cause notice and only four days were afforded to the Appellant to respond to the show cause notice. In view of the above, it is evident that a proper and meaningful opportunity has not been afforded to the Appellant to present its case before the AO. There is a clear violation of the principles of natural Justice. Moreover, the AO also seems to be contradicting himself as apparent from the order.

In Para 3 of his order, the AO states that in response to the notices issued u/s 142(1) dated 11/12/2020, the "assessee - company filed the requisite information as called for. After going through the information furnished, the assessment is completed as under".

Then suddenly in Para 4,5 and 7, the AO states that the assessee has not submitted any details till date/ no reply is received from the assess



till date. In view of the above, the AO has passed the order in clear violation of the principles of natural Justice and the assessment order is bad in law and hereby quashed. This ground is allowed.”

5.1 We find that according to the Ld. CIT(A) due to service of the notice on e-mail ID which was not provided for communication in the return of income, those notices could not be served and therefore, the addition made by the assessee in the assessment order passed is in violation of principle of natural justice, accordingly, he quashed the assessment order. However, we do not agree with the finding of the Ld. CIT(A) for the reason that non-service of query letter/show cause notice are curable defects being irregularity and not illegality. It is undisputed that notice u/s 143(2) of the Act was duly served upon the assessee which is one of the jurisdictional requirement. The notice u/s 142(1) is issued for raising certain queries on the assessee and non-service of the same could have been rectified by the Ld. CIT(A) providing further opportunity to the assessee for filing the reply in respect of those queries. In our opinion, merely for non-service of the notice u/s 142(1) or show cause notice, the assessment order cannot be held to be illegal. Accordingly, we set aside the order of the Ld. CIT(A). Since the assessee could not file the response before the Assessing Officer therefore, we feel it appropriate to restore the matter back to the Assessing Officer for deciding afresh after considering submission of the assessee. The Assessing Officer is directed to issue notice on the address/e-mail address as per the procedure



laid down under Rule 127 of the Income-tax Rules, 1962. The grounds of appeal of the Revenue are accordingly allowed for statistical purposes.

6. In the result, the appeal of the Revenue is allowed for statistical purposes.

Order pronounced in the open Court on 17/10/2024.

**Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER**

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;
Dated: 17/10/2024
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,
(Assistant Registrar)
ITAT, Mumbai