

IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH MUMBAI

**BEFORE MS KAVITHA RAJAGOPAL, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No. 3213/MUM/2024
Assessment Year: 2014-15**

Nissim Traders Pvt. Ltd., 1501, Orient Height, Rajaram Mohanrai Road, Grant Road East, Mumbai – 400 004 (PAN : AABCN3760G)	Vs.	Assistant Commissioner of Income Tax, Circle – 10(3)(1), Mumbai
(Appellant)		(Respondent)

Present for:

Assessee : Shri P.V. Desai, AR
Revenue : Shri Avinash Karpe, Sr. DR

Date of Hearing : 21.10.2024
Date of Pronouncement : 24.10.2024

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi vide order no. ITBA/NFAC/S/250/2023-24/1055753759(1), dated 05.09.2023 passed against the assessment order by the Assessing Officer, Circle 10(3)(1), Mumbai, u/s. 147 r.w.s. 144 of the Income-tax Act (hereinafter referred to as the “Act”), dated 07.12.2019 for Assessment Year 2014-15.

2. Grounds taken by the assessee are reproduced as under:

“1.1 The Ld. CIT(A) erred in law and on facts in upholding the re- opening of the assessment u/s 147 done by the AO in contravention of the provisions of law.

1.2 The Ld. CIT(A) erred in law and facts in not quashing the order u/s 144 r.w.s 147 passed by the AO in total contravention of the provisions of law.

1.3 The appellant prays that the illegal and unlawful order passed u/s 144 r.w.s 147 be quashed.

2.1 Without prejudice to the above:

The Ld. CIT(A) erred in law and on facts in upholding the unjustified and unwarranted addition of Rs 11,02,800/- made to the declared income in contravention of the provisions of law.

2.2 The Ld. CIT(A) failed to appreciate that the AO cannot make the additions to the declared income on vague and frivolous grounds without having any proof or evidence to substantiate his claim.

2.3 The Ld. CIT(A) failed to appreciate that a payment to a party cannot be treated as unexplained cash credit and added to declared income by completely ignoring the facts on record.

2.4 The appellant prays that the unjustified and unwarranted addition to the assessed income of Rs 11,02,800/- made to the assessed income in total contravention of the provisions of law be deleted in toto.”

3. At the outset, we note that there is a delay of 226 days in filing the present appeal before the Tribunal, for which a petition for condonation of delay and affidavit is placed on record explaining the reasons for the delay caused. According to the assessee, first appellate order was directly uploaded on the IT portal on 05.01.2023 and was never served on the assessee either by post or email. Assessee and its Directors were unaware of passing of the said order, fact of which came to their knowledge only when the portal was visited for replying to certain other notices. Thereafter, necessary actions were taken and the appeal was filed with a delay of 226 days. According to the assessee, this delay is unintentional and there exists sufficient cause

which prevented the assessee from filing of appeal within the prescribed time. Considering the facts and circumstances as submitted by the assessee, we find it proper to condone the delay and take up the matter for adjudication.

4. From the perusal of the order of ld. CIT(A), it is noted that it is an *ex parte* order, dismissing the appeal of the assessee since assessee did not provide any explanation, documents or evidences except for one written submission which refers to vagueness of the information received by the ld. Assessing Officer. According to ld. CIT(A), assessee has not explained as to what is the vagueness and thus dismissed the appeal. Further, it is noted that the impugned assessment order is also passed *ex parte* since assessee did not comply to various notices issued by the ld. Assessing Officer for the purpose of making the assessment.

5. Before us, ld. Counsel for the assessee submitted that assessee had filed its return of income on 30.11.2014 reporting total income at Rs.16,19,516/-. Based on the information received by the ld. Assessing Officer from the office of DDIT(Inv), Unit-2, Surat, it was noticed that assessee is one of the beneficiaries who has taken accommodation entries from one Renuka Exim Pvt. Ltd.

5.1. Ld. Assessing Officer asked the assessee about the details in respect of Rs.11 lakhs from Renuka Exim Pvt. Ltd. which remained uncompiled. Ld. Counsel for the assessee referred to the reply furnished before the ld. Assessing Officer dated 02.12.2019, whereby it had requested to provide all the information and material and copies of the documents on the basis of which reasons to believe have been

recorded. It also requested to provide copies of statements of all Directors of Renuka Exim Pvt. Ltd. alleging assessee as a beneficiary to accommodation entries along with material proof to indicate that the transaction of Rs.11 lakhs was an accommodation entry. Through these submissions, assessee contended that re-opening proceedings are completely vague since assessee is in the business of fabric and not in diamond trading as alleged by the ld. Assessing Officer, reflecting conjectures and surmises in the reasons so recorded.

5.2. Ld. Counsel for the assessee submitted that observations made by the ld. Assessing Officer in the order reflects a confused state of mind since at one place, the transaction is said to be of receipt by the assessee and at another place, it is said to be transaction of payment made by the assessee to Renuka Exim Pvt. Ltd. through middle Company, M/s. Kartik Trading Company. According to the ld. Counsel, the transaction of Rs.11,02,800/- is a transaction of payment made to Renuka Exim Pvt. Ltd. on behalf of M/s. ColourShot Trading Company Pvt. Ltd. based on instructions given by M/s. ColourShot Trading Company Pvt. Ltd. Assessee had no direct transactions with Renuka Exim Pvt. Ltd. To substantiate the submission so made, reference was made to copy of confirmation letter issued by Director of the assessee and copy of Income Tax acknowledgment of M/s. ColourShot Trading Company Pvt. Ltd. for Assessment Year 2012-13. He also referred to statement of bank account of the assessee wherein entries relating to these transactions are recorded. All these documents were not before the ld. Assessing Officer and ld. CIT(A), in absence of which the addition has been made, claimed by the ld. Counsel. To this effect, ld. Sr. DR placed

reliance on the orders of the authorities below and submitted that assessee had failed to make its submissions justifying the claim.

6. We have heard both the parties and perused the material on record. We note that there is a transaction as alleged by the ld. Assessing Officer for which assessee claims that it is a transaction of payment made by the assessee on behalf of another party for which necessary documents are placed on record. It is stated by the ld. Counsel that these documents were not before the authorities below for their proper consideration. Considering these facts, we find it proper to remit the matter back to the file of ld. Assessing Officer for *denovo* meritorious adjudication and assessment, after taking into account the submissions made by the assessee. Assessee is at liberty to furnish all the documents and details to substantiate its claim for which necessary opportunities be given.

7. Since the matter is restored to the file of Ld. Assessing Officer for meritorious adjudication by passing a speaking order in terms of our observations made hereinabove, we are not expressing any views on the merits of the case so as to limit the assessment procedure before the Ld. Assessing Officer. The observations herein made by us in remanding the matter back to the file of Ld. Assessing Officer will not impair or injure the case of the Revenue nor will it cause any prejudice to the defense/explanation of the assessee.

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

Order is pronounced in the open court on 24 October, 2024

Sd/-
(Kavitha Rajagopal)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 24 October, 2024

MP, Sr.P.S.

Copy to :

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

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai