

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

BEFORE SHRI MANISH BORAD, ACCOUNTANT MEMBER
AND
SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.1298/PUN/2024
निर्धारण वर्ष / Assessment Year: 2014-15

DCIT, Central Circle-2, Aurangabad.	Vs.	Rajuri Steel And TMT Bars Pvt. Ltd., Plot No.F-16-17 and Gut No.49, 51 & 52, Additional MIDC, Phase- II, Daregaon, Jalna- 431203. PAN : AAICS2970E
Appellant		Respondent

C.O. No.32/PUN/2024
(Arising out of ITA No.1298/PUN/2024)
निर्धारण वर्ष / Assessment Year: 2014-15

Rajuri Steel And TMT Bars Pvt. Ltd., Plot No.F-16-17 and Gut No.49, 51 & 52, Additional MIDC, Phase-II, Daregaon, Jalna- 431203. PAN : AAICS2970E	Vs.	DCIT, Central Circle-2, Aurangabad.
Appellant		Respondent

Revenue by : Shri Ajay Kumar Keshari
Assessee by : Shri B. D. Bhide

Date of hearing : 05.11.2024
Date of pronouncement : 12.11.2024

आदेश / ORDER

PER VINAY BHAMORE, JM:

This appeal filed by the Revenue is directed against the order dated 07.03.2024 passed by LD. CIT(A)-12, Pune ['Ld. CIT(A)']

for the assessment year 2014-15. The assessee is also in cross objection bearing Cross Objection No.32/PUN/2024.

2. The facts of the case, in brief, are that the assessee is a private limited company filed its original return of income on 25.09.2014 declaring loss of Rs.1,80,738/-. The assessment u/s 143(3) of the IT Act was completed on 31.12.2016 at an income of Rs.Nil. Subsequently, the case was reopened u/s 147 on account of transactions related to certain entries for an amount of Rs.6,77,80,000/-. Notice u/s 148 of the IT Act was issued to the assessee and in response, the assessee filed its return of income on 30.04.2021 declaring loss of Rs.1,80,738/-. Thereafter, notices u/s 143(2) and 142(1) of the IT Act were issued to the assessee asking to explain the source of total deposits along with documentary evidence. But, according to the Assessing Officer, no submission was filed by the assessee and the assessment order was passed *ex-parte* u/s 147 r.w.s. 144 r.w.s. 144B of the IT Act determining total income at Rs.6,77,80,000/- by making addition of Rs.6,77,80,000/- on account of unexplained credit u/s 68 r.w.s. 115BBE of the IT Act.

3. In first appeal, after considering the reply of the assessee, ld. CIT(A) set-aside the order passed by the Assessing Officer and partly allowed the appeal of the assessee by observing as under :-

“6.2 I have considered the facts of the case and the submissions made by the appellant. During the appellate proceedings, the appellant has submitted that during the reassessment proceedings, the Ld. AO has held in para 6 of the assessment order that the appellant did not submit any reply/submission in response to notice u/s 142(1) of the Act dated 16.03.2022. However, the appellant has claimed that it has filed the objections vide letter dated 25.03.2022 in response to notice u/s 142(1) of the Act and stated that only after raising preliminary objection to the notice and passing an order on the objection, the appellant shall be able to submit the necessary details called for by the AO. The appellant submitted a copy of preliminary objections vide letter dated 25.03.2022 filed before the Ld. AO through e-filing vide acknowledged no.438502581260322 as under.

xxxxxxxxxx

However, the Ld. AO passed the assessment order u/s 147 r.w.s. 144 r.w.s. 144B of the Act on 29.03.2022 without providing the information requested by the Appellant and without disposing of the objection raised by the appellant.

6.3 In view of the above background and relying on the following decisions in support of his contention that if an appellant raises objections to notice issued u/s 148 then the AO is required to pass a reasoned order disposing of the objections raised by the appellant and then only the AO can proceed with reassessment of escaped income, the appellant made its legal submission. Gist of the decisions relied upon by the appellant vide the legal submission filed by it is as under.

a) GKN Driveshafts India Ltd. (SC) 259 ITR 19:

The Apex Court had laid down guidelines that after the filing of the return in response to notice u/s 148, the AO was duty bound to supply copy of reasons recorded on the request made by the assessee so that he could file the objection to issuance of the notice and the AO was duty bound to dispose of the same by passing separate speaking order. In the present case, the objections were made by the appellant on 26.03.2022 through online but order was passed on 29.03.2022 without passing the speaking order.

b) CIT Vs. Videsh Sanchar Nigam Ltd.-340 ITR 66 (Bom. HC)

c) KSS Petron Pvt. Ltd. Vs. ACIT - Bom. HC

6.4 I find merit in the contention raised by the appellant. There was a failure on the part of the AO to comply with the mandatory requirement of disposing of the objections raised by the appellant to the reopening of assessment. This violates the mandate laid down by the Hon'ble Apex Court and followed by the jurisdictional High Court and Tribunal. Therefore, order passed by the AO is legally not sustainable for his failure to pass a reasoned order disposing of the objections raised by the appellant before passing the assessment order. Revised Ground No. 3 raised by the appellant is therefore, allowed.

6.5 Since, legal ground raised by the appellant vide revised ground no. 3 has been allowed and appellant has got full relief, the remaining revised grounds have become academic and do not require separate adjudication. For statistical purposes, these grounds are treated as dismissed.”

4. It is this order against which the Revenue is in appeal before this Tribunal.

ITA No.1298/PUN/2024, By Revenue :

5. Ld. DR appearing for the Revenue submitted before us that the order passed by ld. CIT(A) without going into merits of the case & allowing the appeal only on the legal ground raised by the assessee is not justified. Ld. DR submitted before us that along with notice u/s 148 reasons for reopening were provided to the assessee and the assessee never raised any objection before the Assessing Officer, therefore, question of passing assessment order without deciding the objection raised by the assessee does not arise. It was further submitted that the assessee only filed an application for providing

the documents on the basis of which the proceedings were initiated u/s 147/148 of the IT Act. It was submitted by ld. DR that from the perusal of the application filed by the assessee before the Assessing Officer on 25.03.2022, it is very much clear that objection was never raised but only some information was sought by the assessee. Accordingly, ld. CIT(A) erred in holding that there was a failure on the part of the Assessing Officer to comply with the mandatory requirement of disposing of the objection raised by the appellant to the reopening of the assessment. It was accordingly requested by ld. DR that order passed by ld. CIT(A) may kindly be set-aside and the order passed by the Assessing Officer be restored.

6. Ld. AR appearing for the assessee submitted before us that the notice u/s 148 was received by the assessee wherein reasons for reopening of the assessment were provided to him but from the perusal of reasons for reopening, it was not clear on the basis of which documents or entries or transactions with whom the case was reopened and, therefore, the assessee filed a letter on 25.03.2022 before the Assessing Officer and requested to provide (a) copy of information suggesting escapement of income available with the Assessing Officer based on which notice u/s 148 of the IT Act has

been issued and source thereof, (b) copies of adverse material and adverse statements, if any, based on which the Assessing Officer stated in notice that there is information with him suggesting escapement of income, (c) copy of order-sheet of Id. PCIT, (d) copy of approval of Id. PCIT and (e) other relevant documents so that objection to the proceedings for reassessment can be filed. It was further submitted that after receiving all these information he can file his preliminarily objection and after disposing of the same, he would have submitted the necessary details as required by the Assessing Officer. But, the Assessing Officer did not take note of this application and proceeded to pass reassessment order *ex-parte*. It was submitted by Id. Counsel of the assessee that even the above request letter dated 25.03.2022 was never ever referred by the Assessing Officer in his *ex-parte* assessment order, therefore, it was submitted that the Assessing Officer erred in not considering/referring/providing the information/documents required by the assessee prior to passing of the assessment order. Id. Counsel of the assessee further submitted that due to this error the *ex-parte* order passed by the Assessing Officer becomes erroneous and accordingly Id. CIT(A) was justified in setting aside the order

passed by the Assessing Officer. It was also submitted by Id. Counsel of the assessee that each and every transaction was duly recorded in his books of accounts and also reflecting in the audit report prepared u/s 44AB of the IT Act. It was contended that all the transactions were made through banking channels and nothing was transacted in cash. Accordingly, it was requested to confirm the order passed by Id. CIT(A).

7. We have heard Id. Counsel from both the sides and perused the material available on record including the paper books furnished by both the parties. We find that the assessment order was passed *ex-parte* and in the *ex-parte* assessment orders, the Assessing Officer has not mentioned even the name of the parties with whom the so called transactions were entered into by the assessee. We also find that the letter dated 25.03.2022 filed by the assessee requesting to provide relevant material on the basis of which the assessment was reopened was not at all considered / referred by the Assessing Officer. At the same time, we also find that the letter dated 25.03.2022 was not a letter of objection to the reassessment proceedings but it was simply a request letter for providing the material so that the assessee can submit his objections to the

reassessment proceedings. We, therefore, find force in the argument of ld. DR that no objection letter was filed by the assessee before the Assessing Officer but at the same time we also find force in the argument of ld. Counsel of the assessee that the Assessing Officer ought to have discussed/referred the letter dated 25.03.2022 in his assessment order and the desired documents/ information should have been provided to the assessee, therefore, the Assessing Officer erred in observing that no response was submitted by the assessee till date. We also find that the books of accounts of the assessee are audited and audit report was furnished before the Assessing Officer, it was contended that all the transactions were recorded in the regular books of accounts subject to audit u/s 44AB of the IT Act. It was also contended before us that the AO failed to brought on record any of the impugned transaction in the *ex-parte* assessment order on the basis of which the assessment was reopened. It was therefore contended by LD AR that the order passed by ld. CIT(A) is justified. On the other hand, it was contended by Ld. DR that Ld. CIT(A) erred in considering letter dated 25.03.2022 as the objection letter. Considering the totality of the facts, we find that the reassessment order was passed *ex-parte*

and no material was brought on record by the Assessing Officer in the reassessment order and the assessment order is silent on this issue of addition. At the same time, Id. CIT(A) has considered the request letter as objection letter and decided the appeal only on legal ground. Accordingly, we deem it appropriate to set-aside the order passed by Id. CIT(A) and restore the matter back to the file of the Assessing Officer with a direction to pass reassessment order afresh as per fact & law, after providing reasonable opportunity of hearing to the assessee so that the assessee can produce relevant documents in support of his contentions. The assessee is hereby also directed to respond to the notices issued by the Assessing Officer in this regard without asking for any adjournment under any pretext, otherwise the AO shall be at liberty to pass appropriate orders as per law. We hold & direct accordingly. Thus, the grounds of appeal filed by the Revenue are partly allowed for statistical purposes.

8. In the result, the appeal of the Revenue in ITA No.1298/PUN/2024 is partly allowed for statistical purposes.

C.O. No.32//PUN/2024 – By Assessee :

9. Since the appeal filed by the Revenue is allowed & matter is restored back to the file of the Assessing Officer for *de novo*

reassessment afresh, therefore, present cross objection filed by the assessee becomes infructuous. Therefore, cross objection filed by the assessee stands dismissed.

10. To sum up, the appeal filed by the Revenue is partly allowed for statistical purposes and the Cross Objection filed by the assessee is dismissed, as above.

Order pronounced on 12th day of November, 2024.

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 12th November, 2024.

Sujeet

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-12, Pune.
4. The Pr. CIT/CIT concerned.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "B" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.