

आयकर अपीलीय अधिकरण  
कोलकाता 'सी' पीठ, कोलकाता में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA 'C' BENCH, KOLKATA**

श्री राजेश कुमार, लेखा सदस्य  
एवं  
श्री प्रदीप कुमार चौबे, न्यायिक सदस्य  
के समक्ष  
Before

**SRI RAJESH KUMAR, ACCOUNTANT MEMBER  
&  
PRADIP KUMAR CHOUBEY, JUDICIAL MEMBER**

**I.T.A. No.: 1094/KOL/2023  
Assessment Year: 2012-13**

***Brijdham Mercantile Private Limited.....Appellant  
[PAN: AADCB 5445 N]***

**Vs.**

***ITO, Ward-5(3), Kolkata.....Respondent***

**Appearances:**

***Assessee represented by: Miraj D. Shah, A/R.***

***Department represented by: Monalisha Pal Mukherjee, JCIT.***

Date of concluding the hearing : September 25<sup>th</sup>, 2024

Date of pronouncing the order : November 22<sup>nd</sup>, 2024

**ORDER**

**Per Pradip Kumar Choubey, Judicial Member:**

This appeal filed by the assessee pertaining to the Assessment Year (in short 'AY') 2012-13 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the 'Act') by Id. Commissioner of Income-tax (Appeals)-NFAC, Delhi [in short Id. 'CIT(A)'] dated 28.07.2023 arising out of the assessment order framed u/s 147/143(3) of the Act dated 29.12.2019.

1. The brief facts of the case of the appellant are that the assessee filed its original return of income for the AY 2012-13 showing loss of Rs. 44,23,392/- . The case of the assessee was reopened on the ground that M/s. Banas

Finance Limited, a penny stock listed on BSE with scrip code amounting to Rs. 11,59,245/- during the FY 2011-12. Notices have been issued, in response to the said notice the assessee filed return of income for the said assessment year 26.04.2019. The assessee filed details in response to the notice issued u/s 143(2) of the Act and notice u/s 142(1) of the Act. The Assessing Officer (hereinafter referred to as ld. 'AO') did not accept the submission of the assessee and treated the entire purchase amount of Rs. 41,99,250/- as bogus expenditure made by way of purchase of penny stock scrip of M/s. Banas Finance Limited and added it u/s 69C of the Act. The said order has been challenged by the assessee before the ld. CIT(A) wherein the appeal of the assessee has been dismissed on the ground that there was no response from the side of the assessee.

Being aggrieved and dissatisfied with the impugned order, the present appeal has been preferred.

1.2. Ld. Counsel for the assessee has challenged the impugned order on various grounds but in course of argument his submission is that ld. AO has added the said amount u/s 69C of the Act that is not at all applicable. The ld. Counsel for the assessee has further submitted that ld. CIT(A) has passed the order behind his back as the assessee could not be able to file documents and submissions due to some unavoidable reasons. Ld. Counsel for the assessee gave emphasis on the Section under which the order of the ld. AO has been passed.

1.3. on the contrary, ld. D/R supports the impugned order and submits that the assessee did not raise this question before the ld. CIT(A) as he did not make any response in spite of sufficient opportunity.

2. We have gone through the order of ld. AO and find that ld. AO has passed the order and added the amount u/s 69C of the Act. We further find that before the ld. CIT(A) the order was not passed on merit, rather it has been passed in limine on account of non-response from the side of the assessee.

3. Keeping in view the fact, that the order has not been passed on merit, by the CIT(A), we are in this view that assessee has to place his entire arguments such as legal as well as factual before the Id. CIT(A), and Id. CIT(A) is directed to pass order after hearing the case of the assessee on legal matter as well as on factual aspects. Accordingly the case is restored in the file of Id. CIT(A) by setting aside the impugned order. The assessee is directed to place his all material before the Id. CIT(A).

4. In the result, the appeal filed by the assessee is allowed for statistical purposes.

**Order pronounced in the open Court on 22<sup>nd</sup> November, 2024.**

*Sd/-*  
**[Rajesh Kumar]**  
Accountant Member

*Sd/-*  
**[Pradip Kumar Choubey]**  
Judicial Member

Dated: 22.11.2024

*Bidhan (P.S.)*

*Copy of the order forwarded to:*

- 1. Brijdham Mercantile Private Limited, 23A Netaji Subhash Road, 8<sup>th</sup> Floor, Room No 4, Dalhousie, Howrah, West Bengal, 700001.**
- 2. ITO, Ward-5(3), Kolkata.**
- CIT(A)-NFAC, Delhi.
- CIT-
- CIT(DR), Kolkata Benches, Kolkata.
- Guard File.

*//True copy //*

By order

Assistant Registrar  
ITAT, Kolkata Benches  
Kolkata