IN THE INCOME-TAX APPELLATE TRIBUNAL "E" BENCH, MUMBAI

BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER

&

SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER

ITA No. 2272/MUM/2024
(A.Y. 2017-18)

ITO,Ward-5(2)(1), R No. 567, Aaykar Bhavan, M.K. Road, Mumbai 400 020, Maharashtra	v/s. बनाम	Kulinkumar Holidays Pvt. Ltd., 51/A Cutch Castle, JSS Road Opera House, Mumbai 400004, Maharashtra
स्थायी लेखा सं./जीआइआर सं./ PAN/GIR No: AAECK7534Q		
Appellant/अपीलार्थी	..	**Respondent/**प्रतिवादी

Appellant by :	Shri Fenil Bhatt,AR
Respondent by :	Shri Biswanath Das (CIT DR)

Date of Hearing	19.11.2024
Date of Pronouncement	26.11.2024

आदेश / O R D E R

PER PRABHASH SHANKAR [A.M.] :-

The present appeal arising from the appellate order dated 01.03.2024 is filed by the Revenue against the order passed by the Learned Commissioner of Income-tax (Appeals)/National Faceless Appeal Centre, Delhi [hereinafter referred to as "CIT(A)"] pertaining to assessment order passed u/s. 143(3) of the Income-tax Act, 1961 [hereinafter referred to as "Act"] dated 26.12.2019 as passed by the

Income Tax Officer, Ward-5(2)(2), Mumbai for the Assessment Year [A.Y.] 2017-18.

2. Main grounds of appeal are as under:

1. *Whether on the facts and circumstances of the case and in law, the Ld CIT(A) was justified in deleting the additions of Rs. 16,63,88,279/ on account of foreign remittances when incomplete details were provided during assessment proceedings.*
2. *Whether on the facts and circumstances of the case and in law, the Ld CIT(A) was justified in deleting the additions of Rs.2,16,06,333/- on account of cash deposits where the submission of the assessee during assessment proceedings didn't prove the source of cash deposit.*
3. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT (A) was justified in deleting the additions of Rs. 16,63,88,279/ on account of foreign remittances and additions of Rs.2,16,06,333/- on account of cash deposits* ***without calling for remand report from the AO as mandated under Rule 46A of the I.T. Act.***

4. Facts of the case are that the assessee, a Private limited company engaged in the business of tours and travels e-filed the return of income on 25.10.2017, declaring total income of Rs.50,81,770/- under the normal provisions of the Act. The assessment was completed u/s. 143(3) of Act, 1961 vide order dated 26.12.2019, assessing an income of Rs. 19,32,78,886/-.

Ground no.1-Addition of Rs. 16,63,88,279/- on account of foreign remittances

5. In the course of the business activity, the assessee was required to make foreign remittances abroad for the purpose of business. During the year,it made foreign remittances to the tune of Rs.24,11,83,442/-. The AO verified the foreign remittances made by the company and noted that it had filed Form 15CA/15CB for Rs.7,47,95,163/- only and for remaining remittances, the Forms had not been filed. The AO therefore came to the conclusion that there was discrepancy inasmuch as that Form 15CA/ 15CB had not been filed in respect of remittances of Rs.16,63,88,279/-.It is submitted that the AO issued a show-cause notice dated 24.12.2019 to the appellant company seeking the remaining certificate in Form 15CA/15CB in respect of foreign remittances. However, the AO allowed only one day's time for filing the said details. The show-cause notice was dated 24.12.2019 and the details were to be submitted as per the said notice only on 24.12.2019 itself. This indicates that the AO has merely completed the formalities to issue show cause notice to the appellant by allowing only one day's time which was from all angle insufficient to collect the details to be filed before the AO. The AO therefore has violated the principle of natural justice in the matter. However, the notice was received by the appellant on 25.12.2019 which was a holiday and accordingly, the requisite details were filed on 26.12.2019. However, the AO has mentioned in the assessment order that no details have been filed by the appellant company at all. This is factually incorrect. The assessee company has filed Form A2 in respect of remittances made. The AO has not taken the cognizance of the its reply and disallowed the foreign remittance made by the company to the

extent of Rs. 16,63,88,279/- and added the same to the total income of the appellant company. The assessee has remitted the said amount genuinely which is related to the business of tours and travels and disallowance of the same was unjustified and illegal.

6. The learned CIT(A) has duly elaborated the issue involved ,contents of the assessment order and also the submissions made. Before him,it was explained that the assessee submitted the copies of Form A2 along with Application cum Declaration/Undertaking, list of passengers and it duly complied with the procedure for making foreign remittances by submitting requisite documents with Form A2 and duly filed Form 15CA wherever there was requirement under law/by Authorised Dealer. The AO did not doubt the foreign remittances and its relation with the appellant's business of Tours and Travels. It further relied on Rule 37BB of the Income Tax Rule 1962. The clause (ii) of sub rule (3) of Rule 37BB provides exemptions from filling Form 15CA. The appellant falls in the Specified List of the clause (ii) of sub rule (3) of Rule 37BB, as Travel under Basic Quota (BTQ). The ld.CIT(AO) observed that the AO noticed that the assessee had total foreign remittances during the year under consideration of Rs. 24,11,83,442/- whereas the assessee had submitted the Form No. 15CA/CB for only Rs. 7,47,95,163/- the AO found there was discrepancy of Rs. 16,63,88,279/-. The assessee further stated that it had filed Form A2 with the Bank whenever tours were organised in case of individuals availing BTQ. The Authorised Dealers as per FEMA have duly verified the documents submitted for the purposed of remittance and accordingly allowed

the payments made outside the India. The appellant had duly furnished Form 15CA wherever there was requirement to file Form 15CA. It was finally concluded by him that the assessee had complied with the relevant provisions of the Act and was covered under Rule 37BB claiming exemption from filling Form 15CA. It had duly filed the Form A2 with AD and submitted documents in support of its ground during the appellant proceedings. Accordingly, addition of Rs. 16,63,88,279/- was deleted.

Ground no.2- additions of Rs.2,16,06,333/- on account of cash deposits

7. The AO has made another addition of Rs. 2,16,06,333/-. This amount was received by the assessee during the course of its business activities in cash which was deposited during demonetization period. It is stated that it had submitted party-wise details from whom cash was received and wherever required appellant company has given PAN number. As per the present IT rules, PAN number was not required to be given by those clients who are making payment in respect of services upto Rs.2 lakhs. Clients who make payment in cash for more thanRs.2 lakhs for services are required to quote their PAN. Following this rule, the information about the clients who have deposited cash for services was submitted. The AO in the assessment order has mentioned that the company had not provided any details in respect of the cash deposited in the bank. It is claimed that this statement of the AO is incorrect, as already mentioned, the details were submitted before the AO on 26.12.2019. The AO has passed the assessment order on 27.12.2019. The AO

should have taken the cognizance of this information while passing the assessment order and had he taken the cognizance of this information, the said addition would not have required to be made. Since no cognizance has been taken, it seems that the AO has totally ignored the details filed by the company and made the addition in haste without appreciating the contents of the appellant's representative. It is felt that AO made the assessment order in haste raising irrelevant demand against the appellant..

8. The ld.CIT(A) observed that the case of the appellant was selected for scrutiny as there was large cash deposit of Rs. 2,16,06,333/- during demonetization period. Show cause notice was issued to the appellant asking to explain the cash deposit and the source thereof. At para No. 5.4 page No. 15 of the assessment order, the AO made the addition of Rs. 2,16,06,333/- as unexplained cash credit u/s 68 stating that the assessee had failed to submit any explanation / details/ reply / supporting documents to explain the nature of transaction neither the PAN of the clients are submitted. It is stated that the appellant gave the detail of cash deposit with clients name, address and amount and submitted that during the demonetization period the company had deposited Rs.2,16,60,500/- which was received from the customers for booking tour during pre-demonetization period. It was further submitted that the company had deposited cash in the bank account out of the receipts from the clients who paid in cash for booking tickets / package tours the same is clearly evident from the cash balance of the company from balance sheet which is duly audited by the Auditor. Further the cash deposits were made

throughout the year and not just during the demonetization period and the same can be verified from the bank statements submitted during the assessment proceedings. It further submitted that the assessee's case is not covered by Rule 114B of the Income-tax Rules, 1962. The Rule 114B provides list of transactions wherein Permanent Account Number (PAN) is to be quoted in all documents for the purposes of clause (c) of sub section (5) of section 139A and that it was not covered by Sr. No. 1 to 17 of Rule 114B and Point No. 18 talks about PAN to be quoted in case of sale or purchase of goods and services if the transaction amount exceeds Rs. 2,00,000/- per transaction. Furthermore, the appellant raised his grievance that though he submitted complete details in respect of cash deposited in bank along with justification and bank statements during the assessment proceedings, the AO has mentioned in the assessment order that the appellant company that assessee company has not provided any details, explanation, PAN or documentary evidence. Though the SCN was issued for clients whose PAN was not submitted but addition was made of the entire cash deposit. The AO did not inquire about the clients with PAN details that means the AO was satisfied with the submission of the appellant with regard to client details with PAN. It was observed by the ld.CIT(A) from the bank statements submitted during the appellate proceedings that it had cash deposits throughout the year as it is the nature of the business of the appellant wherein payments are made in cash too. From the perusal of the same, he finally concluded that the assessee made complete submissions before the AO, however, the AO did not consider the

replies filed by the appellant as the date of hearing / compliance was same i.e. as the date of issuance of SCN. As far as, non-quoting of PAN is concerned, the appellant has submitted that it is covered by Rule 114B of the Income-tax Rules. In view of the above, the addition made by the AO was deleted.

8. Before us, both the Revenue and the assessee have made separate written making claims and counter claims regarding submission made/not made, adequate opportunity allowed/denied before the authorities below. The ld.CIT, DR has vehemently submitted that the Assessing Officer issued show cause notice on 24.12.2019. The time for compliance was fixed at 5.30 p.m. on the same 24.12.2019, However, no response was received by the Assessing Officer until 26.12.2019 when the assessment order u/s. 143(3) was finalized. This is evidenced by the work-flow noting submitted. On perusal of this work-flow noting it is apparent that, it was only after finalizing the order on 26.12.2019, the submission of the assessee was received in the ITBA system. Thus, there was no occasion on the part of the Assessing Officer to consider the submission made by the assessee on 26.12.2019, the same being a subsequent event. Thus, the submission made by the assessee on 26.12.2019 was, in fact, not received by the Assessing Officer before finalization of the assessment. Rather, it was received in the ITBA portal after finalization of the assessment.

8.1 It is further stated by the ld.DR that two issues were raised by the Assessing Officer in the show cause notice. The first was with regard to foreign remittance and the second issue was with regard to cash deposits. Since, no response was received by the Assessing Officer before finalization of the

assessment u/s 143(3), the AO decided the same on the facts of the case. However, the Ld. CIT(A), while deciding the appeal of the assessee, observed that the Assessing Officer has not considered the reply filed by the assessee on 26.12.2019. As already stated above, this submission of the assessee was not received by the Assessing Officer, before finalization of the assessment as is evidenced by the work-flow noting filed. Thus, the observation of the CIT(A) that the Assessing Officer did not consider the submission made on 26.12.2019 is factually incorrect. Further, while giving relief to the assessee on both the issues, the Ld. CIT(A) heavily relied on the submission made by the assessee on 26.12.2019.

8.2 It is further argued that it is crystal clear that the relief given by the CIT(A) was, inter alia, based on submission made by the assessee on 26.12.2019, which was never received by the Assessing Officer before finalization of the assessment. Thus, the decision of the CIT(A), having been based on the submission made on 26.12.2010 (not received by the Assessing Officer, before finalization of the assessment) this tantamount to **additional evidence.** In view of this factual position, the **Department has raised ground no. 3 i.e. violation of Rule 46A** while giving relief on the issue of addition made under the head foreign remittance and cash deposits.

9. Per contra, the learned AR has repeated the same contentions as made before the ld.CIT(A) inter alia claiming that w.r.t. addition of foreign remittance, the AO verified the foreign remittances made by the appellant company and noted that the appellant had filed Form 15CA/15CB for

Rs.7,47,95,163/- only and for remaining remittances, the Forms have not been filed. The AO issued a show-cause notice dated 24.12.2019 to the appellant company seeking the remaining certificate in Form 15CA/15CB in respect of foreign remittances. However, the AO allowed only one day's time for filing the said details. The show-cause notice was dated 24.12.2019 and the details were to be submitted as per the said notice only on 24.12.2019 itself. However, the notice was received by the appellant on 25.12.2019 which was a holiday and accordingly, the requisite details were filed on 26.12.2019. However, the AO has mentioned in the assessment order that no details have been filed by the appellant company at all. This is factually incorrect. The assessee company has filed Form A2 in respect of remittances made. The AO has not taken the cognizance of the appellant's reply and disallowed the foreign remittance made by it to the extent of Rs. 16,63,88,279/- and added the same to the total income of the appellant company.

9.1 The AO has made another addition of Rs. 2,16,06,333/. The AO in the assessment order has mentioned that the appellant company has not provided any details in respect of the cash deposited in the bank. This statement of the AO is incorrect, as already mentioned, the details were submitted before the AO on 26.12.2019. The AO has passed the assessment order on 27.12.2019. The AO should have taken the cognizance of this information while passing the assessment order and had he taken the cognizance of this information, the said addition would not have required to be made. Since no cognizance has been taken, it seems that the AO has totally ignored the details filed by the

assessee and made the addition in haste without appreciating the contents of the appellant's representative.

10. We have carefully considered all the relevant facts of the case, perused the details and other submissions made, contents of the assessment and appellate order etc. It is quite palpable from the orders of both the ld.AO and the CIT(A), that they have not adhered to the principles of natural justice before arriving at their respective conclusions. The AO has not accorded adequate opportunity of hearing to the assessee as apparent from the show cause and its date of compliance on the same date or just a few days, thus violating the basic tenets of law. It appears that in order to pass order with limitation time nearing, he hurried in passing the order without keeping in mind that adequate opportunity of hearing has to be accorded to other party. Natural justice requires that persons liable to be directly affected by proposed administrative act, decision or proceedings be given adequate notice of what is proposed so that they may be in a position to make representation on their own behalf or to appear at a hearing or enquiry and effectively prepare their own case and to answer the case, if any, they have to meet. It is a fundamental principle of natural justice that no judge or any other power having been conferred judicial powers can come to judicial or quasi judicial decision without hearing all the parties who are affected by the decision. If such rules of natural justice are not followed, any such proceeding would be vitiated. Reference could be made of landmark decisions in the cases of **Chandi Prasad Chokhani vs State of**

Bihar 43 ITR 498(SC), Dhakeshwari Cotton Mills vs CIT 26 ITR 775(SC) and Pannal Binraj vs Union of India 31 ITR 565(SC).

10.1 Likewise, the ld.CIT(A) has taken cognizance of submissions and details submitted before him for the first time and allowed substantial relief. He did not take into account the provisions contained in Rule 46A of the Income Tax Rules.The right of the AO for making investigation and enquiry was curtailed by the CIT(A) who merely by placing reliance on the evidences furnished before him, deleted the additions. He did not allow proper opportunity to the AO for making investigation in the matter and the additions were deleted without cogent reasons.

10.2 During hearing of the case, both the parties representing the Revenue and the assessee made a request for sending back the case to the ld.CIT(A) for a *de novo* consideration. Thus, in the interest of justice, we deem it appropriate to allow the appeal for statistical purposes, emphasizing the need for a thorough and compliant adjudication process. The ld. CIT(A) shall give proper and adequate opportunity to the Assessing officer as per Rule 46A on additional evidences by calling for a remand report. He would also grant a reasonable hearing to the assessee as well, in accordance with principles of natural justice in the set aside remand proceedings. Needles to state, the assessee will comply with notices and any details sought by the appellate authority.

In the result, the appeal is allowed for statistical purposes.

Order pronounced in the open court on 26/11/2024.

Sd/-	**Sd/-**
SANDEEP GOSAIN	**PRABHASH SHANKAR**
(न्यायिक सदस्य /JUDICIAL MEMBER)	**(लेखाकार सदस्य /ACCOUNTANT MEMBER)**

Place: मुंबई/Mumbai
दिनांक /Date 26.11.2024
Lubhna Shaikh / Steno

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT, Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench, Mumbai.