

| आयकर अपीलीय अधिकरण न्यायपीठ, मुंबई |
IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, MUMBAI

SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER
&
BEFORE ANIKESH BANERJEE, HON'BLE JUDICIAL MEMBER

I.T.A. No. 3824/Mum/2023
Assessment Years: 2013-14
&
I.T.A. No. 3825/Mum/2023
Assessment Years: 2011-12

Amrrut Shavjjibhai Gada, Mumbai Sejal Glass House Krishna Kunj, Ground Floor S.V. Road, Malad (West) Mumbai - 400064 [PAN: AADPG5298D]	Vs	DyCIT, Circle-13(2)(1), Mumbai
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :	Dr. Prayag Jha & Shri Prateek Jha, A/Rs	
Revenue by :	Dr. K.R. Subhash, CIT, D/R & Shri Ram Krishn Kedia, Sr. D/Rs	

सुनवाई की तारीख/Date of Hearing : 09/12/2024
घोषणा की तारीख /Date of Pronouncement: 11/12/2024

आदेश/ORDER

PER NARENDRA KUMAR BILLAIYA, AM:

I.T.A. No. 3825/Mum/2023 & I.T.A. No. 3824/Mum/2023, are two separate appeals by the assessee preferred against the two separate orders dated 19/09/2023 and 26/09/2023 by NFAC, Delhi, pertaining to AYs 2011-12 & 2013-14.

2. Both these appeals are disposed off by this common order as the underlying facts in the issues are common.

3. Representatives of both the sides were heard at length on the fact of ITA No. 3825/Mum/2023 for AY 2011-12. The grievance of the assessee reads as under:-

- “1. The Ld CIT(A), NFAC, erred in not appreciating that the Ld AO had reopened the assessment for A Y 2011-12 under section 147 after expiry of four years without having reason to believe that income chargeable to tax had escaped assessment and the impugned Assessment Order was bad in law.
2. The Ld CIT(A), NFAC, erred in not appreciating that the Ld AO had reopened the assessment after expiry of four years without demonstrating that income chargeable to tax had escaped assessment because of failure on the part of the assessee to disclose fully and truly material facts necessary for his assessment.
3. The Ld CIT(A), NFAC, erred in not appreciating that the Ld AO had passed Assessment Order under section 144 of the I T Act without allowing the assessee reasonable opportunity of being heard.
4. The Ld CIT(A), NFAC, erred in ignoring the fact that the Ld AO had utilized the statements recorded by the Investigation Wing of the Income Tax Department without providing the assessee with copies of those statements, thereby had violated the principles of natural justice rendering the impugned Assessment Order bad in law.
5. The Ld CIT(A), NFAC, erred in ignoring the fact that the Ld AO not had granted the assessee opportunity to cross examine the persons whose statements were recorded by the Investigation Wing and which were relied upon by him. This has rendered the assessment order bad in law liable to be quashed.
6. The Ld CIT(A), NFAC, erred in not appreciating that the Ld AO had made addition of Rs. 17,18,50,000/- under section 68 of the I T Act, without demonstrating that the alleged transactions were recorded in the assessee's books of account.
7. The Ld CIT(A), NFAC, erred in not considering that the Ld AO had invoked the provisions of section 68 of the I T Act though the conditions provided in this section were not present in the assessee's case.
8. The above grounds of appeal are without prejudice to one another.
9. The appellant craves leave to furnish Additional Evidence which may be relevant to the above Grounds of Appeal in course of the appeal proceedings.
10. The appellant craves leave to amend or alter any of the above Grounds of Appeal or to add new Grounds of Appeal during the course of appeal proceedings.”

3. Briefly stated, the facts of the case are that, a search and seizure operation was conducted at the premises of M/s. Evergreen Enterprise. During the course of search proceedings, statements were recorded of some employees of M/s. Evergreen Enterprise, namely Shri Ashwin Rathod and Smt. Vibha Sachin Rawate, who in their respective statements admitted that they maintain cash loan ledgers/documents at the premises of M/s. Evergreen Enterprise. Two other employees, namely, Shri Jagdish T. Ramani and Shri Shankar Jadhav, also

submitted in their statements recorded on oath u/s 132(4) of the Act that all the cash transactions are entered by them and they are involved in collection and disbursements of cash loan and interest to both lenders and borrowers.

4. On the basis of the information received from the DDIT, Unit - 5(4), Mumbai, regarding cash loan borrowed by the assessee from different persons, the case of the assessee was reopened u/s 147 of the Act. As per the information, the assessee has borrowed cash loan from different parties which are as under:-

F.Y.	Persons who gave cash Loan, to Shri Amrut S. Gada	Amount [Rs.]
2010-11	M/s. Sejal Glass Ltd.	14,00,00,000/-
2010-11	M/s. Hero Paper	81,00,000/-
2010-11	M/s. Mitesh Textiles	52,00,000/-
2010-11	M/s. Paper Mate	5,00,000/-
2010-11	M/s. Bhanu Cosmetics	1,80,50,000/-
	TOTAL	17,18,50,000/-

5. The assessee was issued notice u/s 148 of the Act. A formal notice u/s 142(1) of the Act was also issued and sent through e-filing portal/e-mail, giving opportunity to file, the assessee his return of income and submitting details for AY 2011-12. The assessee chose not to respond. After giving sufficient opportunities to file the return of income, the AO was left with no choice but to frame the assessment *ex-parte* u/s 144 of the Act and made addition of Rs. 17,18,50,000/- u/s 68 of the Act.

5.1. The assessee agitated the matter before the Id. CIT(A) and filed submissions in which it was explained that the assessee is dealing in glass and is also director in some companies. It was brought to the notice of the Id. CIT(A) that the assessee filed its return of income on

30/09/2011 declaring total income of Rs.56,57,915/- which was processed u/s 143(1) of the Act. The reopening of the assessment was strongly challenged before the Id. CIT(A) contending that the AO had no reason to believe that income chargeable to tax in the hands of the assessee in AY 2011-12, had escaped assessment and the AO had no concrete material or documents on the basis of which he had reason to believe that income chargeable to tax has escaped assessment. It was also contended that statements relied upon by the AO, are third party evidence, copies of which were never provided to the assessee nor the AO has provided copy of reasons recorded before issuing notice u/s 148 of the Act.

5.1.1. After considering the facts and the submissions, the Id. CIT(A) was of the opinion that the AO had tangible material in the form of information about receipt of cash loan from different parties by the assessee and on the basis of the documents and the statements recorded, the investigation unit has found that the said employees from/through the entity M/s. Evergreen Enterprises, had given/borrowed cash loans. Thus, there is overwhelming evidence already on record and the assessee is beneficiary of such cash loans. The re-opening was justified.

5.2. On merits, the Id. CIT(A) was of the opinion that the assessee has been found to be in receipt of cash loans from different parties though, the AO has made addition u/s 68 of the Act but the Id. CIT(A) was of the opinion that the proper Section should have been Section 69A of the Act and accordingly modified the additions made by the AO from Section 68 to Section 69A of the Act and confirmed the same.

6. Before us, the ld. Counsel for the assessee reiterated what has been stated before the lower authorities. The ld. D/R placed strong reliance on the order of the authorities below.

7. We have given a thoughtful consideration to the orders of the authorities below. The AO had definite information in the form of statements recorded at the time of search on M/s. Evergreen Enterprises. Therefore, it cannot be said that the AO had no tangible material evidence with him. The AO issued notices but the assessee, in his wisdom, chose not to respond. The AO further issued questionnaires asking the assessee to furnish the details of his income. Again, the assessee chose not to respond. Therefore, it cannot be said that the assessee was not given sufficient opportunity to explain the expenditure.

8. There is no dispute that the entire additions have been made on the statements of the employees of M/s. Evergreen Enterprises. It is also not known from the orders of the authorities below, whether such statements were provided to the assessee or any opportunity to cross-examine the person whose statements were recorded, have been provided to the assessee. This act of the lower authorities suggests that there is gross violation of principles of natural justice. Moreover, even the reasons for reopening the assessment have not been mentioned in the assessment order, though there is a passing reference to some information received from the office of the DDIT but if the reasons recorded for re-opening the assessment were not provided by the AO, at least he should have extracted the entire reasons in the body of the assessment order.

8.1. The conduct of the assessee is such, that right from the very beginning, he adopted the approach of non-cooperation. Therefore, it would be very difficult to decide the quarrel on incomplete facts.

9. Irrespective of the conduct of the assessee, in the interest of justice and fairplay, we deem it fit to restore the quarrel to the file of the AO. The assessee is directed to avail this opportunity and explain, with documentary evidence that he had no transactions with the alleged parties mentioned in the assessment order. The AO is directed to confront the statements of the employees of M/s. Evergreen Enterprises, to the assessee and a fair opportunity to cross-examine the said parties be given to the assessee and decide the quarrel afresh. It is made abundantly clear that if the assessee chooses again not to cooperate with the AO in the assessment proceedings, then the AO is free to decide as per the provision of the law. With the above directions, both the appeals are set aside on the merits of the case while confirming the order of the ld. CIT(A) on re-opening of the assessment.

10. In the result, both the appeals are partly allowed for statistical purposes.

Order pronounced in the Court on 11th December, 2024 at Mumbai.

Sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Sd/-

(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Mumbai, Dated 11/12/2024

Sd/-

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, मुंबई /DR,ITAT, Mumbai,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Mumbai