



IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCHES "SMC", KOLKATA

BEFORE DR.MANISH BORAD, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA Nos.329 and 330/Kol/2024

Assessment Years: 2011-12 and 2012-13

M/s. Lectrodryer Marketing Pvt. Ltd., 5, Clive Row, Room No.60A, 3 rd Floor, Kolkata, West Bengal – 700 001 PAN : AAACL5914H	V/s	ITO, Ward-9(1), Kolkata
Appellant		Respondent

Assessee by	:	Shri Miraj D. Shah
Revenue by	:	Ms. Madhumita Das
Date of hearing	:	27.11.2024
Date of pronouncement	:	23.01.2025

आदेश / ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER :

The captioned appeals pertaining to Assessment Year 2011-12 and 2012-13 at the instance of assessee are directed against the separate orders both dated 14.06.2023 and passed by National Faceless Appeal Centre, Delhi u/s.250 of the Income-tax Act, 1961 (In short 'the Act') which in turn are arising out of respective Assessment Orders passed u/s.143(3)/147 of the Act.



2. At the outset, I find that the appeals are time barred by limitation by 190 days. The assessee filed condonation petition stating that the assessee was not aware of the notices as well as passing of the appellate order. It was only in the month of February, 2024 when the Jurisdictional AO called the assessee for payment of demand, the assessee came to know of passing the order by the Id.CIT(A). The assessee immediately took steps for filing the appeal. The delay occurred in filing the appeal is not intentional, therefore, the same may be condoned. The assessee relied on various judicial precedents on the delay.

3. I have gone through the averments made in the condonation petition and the *exparte* order passed by the Id.CIT(A). I am satisfied with the reasons so stated. In the absence of anything contrary to disbelieve the version of assessee, I am of the view that the delay in the instant case deserves condonation in the larger interest of justice by virtue of judgment of the Hon'ble Supreme Court in the case of *Collector Land Acquisition Vs. MST Katiji (1987) 167 ITR 471 SC*.

4. Succinctly, the facts of the case for the A.Y. 2011-12 are that the assessee is a Private Limited Company engaged in the business of Trading and Investment. Income of Rs.1,37,430/- was furnished in the return of income filed for the A.Y. 2010-11. The case selected for scrutiny on the information that the



assessee deposited cash in the Axis bank maintained at Anwar Shah Road, Kolkata in the case of M/s. Turf Advertising Marketing Company Pvt. Ltd. and the fund was subsequently transferred to various concerns/individuals during the period 31.05.2010 to 18.04.2012, thereby the assessee got the benefit of Rs.20.00 lakh Statutory notices were issued to the assessee through ITBA portal. Assessing Officer also obtained information from the banks through notices u/s.133(6) of the Act. In response to the notice, it was submitted that the assessee paid Rs.20.00 lakh through online to M/s. Turf Advertising and Marketing Limited on 12.02.2011 and received the same on 17.03.2011. Ld. AO issued notice dated 12.10.2018 along with questionnaire assessee to explain the purpose and nature etc. in response to which the assessee requested to supply the copy of reasons recorded to his mail. In absence of any reply from the assessee, Ld. AO eventually added the said sum of Rs.20.00 lakh to the total income of the assessee u/s.68 of the Act.

5. Dissatisfied assessee preferred appeal before the ld.CIT(A) who vide impugned order dismissed the appeal *in limine* for non-prosecution. The finding of ld.CIT(A) is reproduced below “

“6.1. As there was no response, reminders dated 09.09.2022, 03.11.2022 etc. were issued. Still there was no reply from the end of the appellant. Therefore, a system generated communication dated 15.11.2022 was also notified to the appellant with the message, "The



communication window with the CIT(A) has been enabled.” As usual, there was no answer.

7. No reply till date has been received. No adjournment has been sought. Quite clearly, the appellant does not wish to rebut the contentions of the AO and the conclusions drawn.

8. It is trite that the law assists the vigilant and not the indolent as stated in the Latin Maxim "Vigilantibus non dormientibus jura suveniunt". Clearly, appellant is not interested in submitting requisite details to contest the appeal. Accordingly, the grounds of appeal are decided against the appellant.”

6. The facts for A.Y. 2012-13 emanating from the record are that the assessee furnished income of Rs.3,96,395/- in its return filed for the A.Y. 2012-13. The case was selected for scrutiny on the basis of the information that the assessee has shown bogus loss in the Commodity Trading given by Mr. Sachet Saraf through his company M/s. Merry Gold Vanijya Pvt. Ltd. and the assessee was one of the beneficiary which indicated loss of Rs.20,58,326/-. Based on the statement given by the broker u/s.132(4) the AO opined that the entries given by him are bogus loss which has no evidentiary value. The AO issued notice u/s.133(6) to MCX stock exchange, but there was no reply from it confirming the same. In the event, ld. AO made addition of said sum of Rs.20,58,326/- to the total income of the assessee.



7. An appeal preferred by the assessee before the ld.CIT(A) came to be dismissed *in limine* for non-prosecution on similar lines *para materia* with that of A.Y. 2011-12.

8. Now the assessee is in appeals before the Tribunal challenging the impugned order passed by ld.CIT(A).

9. So far as appeal for A.Y. 2011-12 is concerned, ld. Counsel for the assessee submitted that the alleged addition is uncalled for because the amount which has been added as unexplained cash credit is actually the refund of advances given earlier. He submitted that the assessee gave advance on 12.02.2011 and it was refunded on 17.03.2011 in the same assessment year. Further, he submitted that the order of ld.CIT(A) is not in accordance with law as per the provisions of section 250(6) of the Act.

10. As regards the appeal for A.Y. 2012-13, Ld. Counsel for the assessee submitted that the issue involved is regarding addition of commodity loss of Rs.20,58,326/- and the AO did not issue any show cause notice before making the addition and also not provided material, copy of statement of Mr. Sachet Saraf on whose statement given u/s.132(4) of the Act the alleged addition has been made.



11. On the other hand, ld. Departmental Representative vehemently argued supporting the orders of the lower authorities for both the assessment years under appeal.

12. I have heard the rival submissions made by the parties and perused the record placed before us. I have carefully gone through the impugned orders passed by the ld.CIT(A) and that the ld.CIT(A) has dismissed the appeals *in limine* for both the assessment years, without discussing anything on merits of the case as contemplated u/s.250(6) of the Act. As regards, the appeal for A.Y. 2011-12, it is the contention of the assessee that he gave advance of Rs.20.00 lakh online to M/s. Turf Advertising and Marketing Limited on 12.02.2011 and received back the amount on 17.03.2011. Therefore, the AO was not right in adding the amount. As regards the appeal for A.Y. 2012-13, the assessee submitted that he was not provided with any material, copy of statement u/s.132(4) which was used against the assessee in making the addition.

13. Further, the settled position of law mandates the ld.CIT(A) to dispose of the appeal by adjudicating the issues raised in appeal on merits as contemplated u/s.250(6) of the Act giving reasons thereof. In this regard, reference is being made to a decision of the Hon'ble Bombay High Court in the case of *Pr.CIT(Central) Vs. Premkumar Arjundas Luthra (HUF)*



Bombay)/[2017] 297 CTR 614 (*Bombay*) wherein it was held that ld.CIT(A) NFAC is obliged to dispose of the appeal on merits even in an *exparte* order.

14. Considering the totality of the case and the submissions made by ld. Counsel for the assessee, I am of the considered opinion that the issues on merit for both the years under appeal deserve to be remitted back to the ld.CIT(A) for *denovo* adjudication. In view thereof, without dwelling into merits of the issue, the issues on merits are being remitted to the file of ld.CIT(A). Ld. CIT(A) is directed to provide the relevant material, copy of statements etc. to the assessee for giving an opportunity to rebut the same. If required, the ld.CIT(A) may call for the remand report from the Jurisdictional Assessing Officer and after obtaining the counter comments from the assessee, should decide the appeals in accordance with law after giving reasonable opportunity of hearing to the assessee. Assessee is also directed to remain vigilant and not to take adjournment unless otherwise required for reasonable cause, failing which the ld.CIT(A) shall be free to proceed in accordance with law. Findings of the CIT(A)/NFAC for both the A.Yrs. 2011-12 and 2012-13 are set aside and Effective grounds of appeal raised by the assessee are allowed for statistical purposes.



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15. In the result, both the appeals of the assessee are allowed for statistical purposes.

Order pronounced on this 23rd day of January, 2025.

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

पुणे/Pune; दिनांक / Dated : 23rd January, 2025
Satish

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, “(SMC)” बेंच, Kolkata/ DR, ITAT, “(SMC)” Bench, Kolkata.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Assistant Registrar,
ITAT, Kolkata