

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'K (SMC)' BENCH MUMBAI
BEFORE: SHRI PAWAN SINGH, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

ITA No. 2138/MUM/2024(AY: 2012-13)

Let's Talk Institute Pvt. Ltd. Office No. 1, Cinemax Theatre Compound, Trikamdass Road, Kandivali(West), Mumbai-400 067	Vs.	Income-tax Officer-Ward- 12(3)(3),Mumbai Aayakar Bhavan, M.K.Road, New Marine Lines, Mumbai-400 020
PAN: AABCL 7237 Q		
(Appellant)	..	(Respondent)

Assessee by	Shri. Ketan Vajani CA
Revenue by	Shri. Abhishek Tharwal, Sr. DR
Date of Hearing	07/05/2025
Date of Pronouncement	30/05/2025

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by the assessee is directed against the order of NFAC/ Learned Commissioner of Income Tax (Ld. CIT(A)) dated 26.02.2024 for A.Y. 2012-13.

The assessee has raised the following grounds of appeal:

I. "Objection against the reassessment made in the case of the appellant

(a) The assessing officer has erred in making an invalid reassessment in the case of the appellant for various reasons.

(b) Your appellant respectfully submits that the reassessment initiated in its case is invalid for the following reasons:

- That the reassessment had been initiated on incorrect reasons that the appellant was a non-filer of the Return of Income and accordingly the belief formed that the income of the appellant had escaped assessment is incorrect and without application of mind.*
- That the reassessment was initiated merely for the purpose of making inquiries in the case of the appellant.*

- *That the reassessment had been initiated on borrowed satisfaction and there was no independent application of mind by the assessing officer.*

(c) Your appellant, therefore, submits that the impugned reassessment, being not in accordance with the law, the same deserves to be quashed. The appellant prays that the same may please be quashed.

II. Objection against confirming the addition of Rs. 82,967/- on account of Business Income

(a) Without prejudice to Ground - I above, the Commissioner of Income-tax-NFAC, hereinafter referred to as the CIT (A), has erred in confirming the addition of Rs. 82,967/-, made in the case of the appellant on account of alleged business income computed @ 30% of Rs. 2,76,558/- on the basis of entries in Form 26AS

(b) Your appellant respectfully submits that the above amount of Rs. 2,76,558/- has already been considered as part of revenue of the appellant and therefore no further addition in relation to the same can be made in the case of the appellant.

(c) The appellant, therefore, submits that the impugned addition is not justified and the same deserves to be deleted. The appellant prays that the said addition may please be deleted.

III. Objection against confirming the addition of Rs. 26,19,911/- on account of cash deposited in bank by applying the provisions of section 68 of the Act

(a) Without prejudice to Ground-1 above, the CIT (A) has erred in confirming the addition of Rs. 26,19,911/- on account of cash deposited in bank by applying the provisions of section 68 of the Act in relation to the same.

(b) Your appellant respectfully submits that the CIT (A) has failed to appreciate that the cash deposited in bank is out of the normal business operations of the appellant and the same have been already considered in the amount of revenue earned by the appellant and accordingly the same cannot be treated as unexplained cash credit for the purpose of section 68 of the Act.

(c) Your appellant also submits that the impugned addition results in double addition in the case of the appellant since the amount has already been considered by the appellant in its profit and loss account.

(d) The appellant, therefore, submits that the impugned addition is not justified and the same deserves to be deleted. The appellant prays that the said addition may please be deleted."

Vide application dated 26.08.2022 the assessee has raised the following additional grounds of appeal:

"IV. Objection against assessment being made without issue of statutory notice u/s. 143(2)

(a) The assessing officer has erred in completing the reassessment in the case of the appellant without issue of the statutory notice as required u/s. 143(2) of the Act and thereby depriving the appellant to make any submissions during the course of the assessment.

(b) The appellant respectfully submits that the reassessment made in its case is invalid in absence of the statutory notice issued and the same deserves to be quashed.

(c) The appellant, therefore, prays that the reassessment made may please be quashed."

2. Brief stated fact of the case are that the assessee is a company and no return of income is filed by the assessee as recorded by the assessing officer in para No.1 of assessment order. The assessing officer having specific information in system about financial transaction undertaken by the assessee during the relevant financial year. Thus, the assessing officer in order to verify various transactions in the regular books of accounts and taxable income was of the view that income of assessee has escape from assessment, obtained approval of Ld. PCIT under section 151 after recording reasons, issued notice under section 148 dated 27.03.2019 to the assessee. The Assessing Officer recorded that in response to notice under section 148 the assessee filed return of income on 28.03.2019 declaring loss at Rs.12,90,789/-. The assessing officer in para No.3 of assessment order recorded that notice under section 142(1)/143(2) were also issue to the assessee. The assessing officer recorded that despite assessing officer various notice the assessee fail to make response. The assessing officer

proceeded under section 144 and passed assessment order on 16.08.2019 by making addition on account of business income of Rs. 82,967/-, addition under section 68 of Rs. 26,19,911/-.

3. Aggrieved by the addition in the assessment orders, the assessee file appeal before the the CIT(A). Before the CIT(A) the assessee has challenged only additions made in the assessment orders. The assessee had not challenged validity of reopening. The Ld. CIT(A) in para No.4 of his order recorded at 3 show cause notice under section 250 were issued to the assessee. In response to such notice the assessee filed its written submissions on various date. The assessee requested for conducting video conference, which was allowed. However, none attended a video conference. Thus the Ld. CIT(A) passed by impugned order on the basis of material available on record. The Id CIT(A) confirmed both the additions. On the addition under section 68, the Id CIT(A) held that the assessee fail to give any supporting evidence about cash deposit in their bank accounts. Thus, cash credit in the bank account of Rs. 26,19,911/- was treated as unexplained cash credit under section 68. There, was another sum of Rs. 2,76,558/- on which TDS was made for payment of professional and technical fee, which was treated has business turnover of the assessee as the assessee is not provided any detail. Therefore, the Id CIT(A) confirmed the order assessing officer in estimated 30% of gross receipt. Further aggrieved, the assessee has filed present appeal before Tribunal.
4. We have heard the submission of Ld. Authorized Representative (Ld. AR) of the assessee and the Ld. Senior Departmental Representative (Ld. Sr. DR) of the revenue and have gone through orders of lower authorities carefully. The Ld.AR

of the assessee submit that the assessee raised additional ground of the appeal that no notice u/s 143(2) was served upon the assessee thus, in absence of issuance of such notice assessment order is bad in law and liable to be quashed. Once assessment order is quashed from the addition made therein will become *void and ab-initio* to support this contention of Ld.AR of the assessee relied on Asst. CIT v. Hotel Blue Moon reported in 321 ITR 362(SC), CIT v. Laxman Das Khandelwal reported in 417 ITR 325(SC), Anantpur Kalpana v. ITO reported in 194 ITD 702 (Bangalore Trib.) and Pr.CIT v. Tripati Proteins (P.) Ltd. reported in 165 taxmann.com 175(Guj.).

5. The Ld.AR further submits that he is also raised grounds of appeal against reopening. The re-assessment was made merely for purpose of making enquiry. The assessment is initiated on borrowed satisfaction without making any independent application. On merit of the case Ld.AR submits that of the cash credit added by assessing officer has already being including while computing the total income. The assessee has lost during the year. Even business receipt treated on the bases of TDS as a part of total turnover of the assessee and no separate addition is to be made. On merits the Id AR of the assessee submits that the assessee is a Private Limited Company and engaged in training of students and employees of various corporate house to develop their skills for better performance. The assessee had deposited cash out of payment collected from students against the course offered. The payment was made by students in cash and was deposited at various locations. Such payments are reflected in the audited accounts. The Id AR of the assessee submits that during the year they have suffered loss of Rs. 12,90,789/-. Though their operating revenue was of Rs.

2.12 crore which includes cash deposit by students at various centre of Rs. 1,31,70,675/- and Rs. 80,43,903/- as profession fees were received from corporate house for training of their employees. Thus, the business revenue of Rs. 2,76,558/- considered by assessing officer for making addition of business income is already included in the operating income. Since TDS was deducted on professional fees and the assessee claimed such refund of TDS, which was treated as business receipt. Additions of such business receipt are baseless. Further, the cash credit is also included in total cash deposit of Rs. 1.31 Crore. The Id AR for the assessee submits that no additions are liable to be sustained.

6. During hearing the Ld. AR of the assessee was confronted with fact that assessment was completed under section 144, and it contained reference of issuance of notice under section 143(2), and the Id AR of assessee was asked to substantiate the basis of his ground, about non issuance of notice under section 143(2). Further, the assessee has not participated in the assessment proceedings except filing return of income in response to notice under section 148. On merits of the case, it was also confronted that assessment as well as Ld. CIT(A) order contain the reference that the assessee has not furnished any evidence. But, now the assessee has filed voluminous evidence/documents running into 1 to 203 pages. And further, despite allowing video conferencing none participated in such video conferencing during the hearing before the Ld. CIT(A). The Ld. AR of the assessee insisted that he has good case of merit and he is liable to be succeed on legal issue of non issuance notice under section 143 (2) and on validity of reopening.

7. On the contrary, the Id. Sr. DR for the revenue supported the order of lower authorities. The Id. Sr. DR submitted assessment was completed under section 144. The assessing officer passed best judgment assessment on the basis of material available on him. Para No.3 of assessment order contained reference of issuance of notice under section 143(2). Against the validity of reopening, Ld. Sr. DR for the revenue submitted at the time of re-opening a prima facie view of assessing officer is sufficient, sufficiency of reason is not to be seen at the time of re-opening as has been held by the Hon'ble Supreme Court in Raymond Wooleen Mills Vs ITO (1999) 236 ITR 34 SC. On merit of additions the Ld. DR of the revenue submit that both the lower authorities have passed orders for want of evidence, despite allowing full opportunity to the assessee, thus the assessee does not deserve any relief at this stage. In alterative and without submission the Ld. DR for the revenue submits that in case this bench is of the view that the assessee deserve any relief, the matter may be restore back to file of Ld. CIT(A) for adjudication at merit from the assessee may seek liberty on the contest such issues before the Ld. CIT(A).
8. We have considered the rival submission of both the parties and have gone through the orders of lower authorities carefully. First we are considering the legal issue / additional grounds of appeal that no notice under section 143(2) was issued by assessing officer before passing assessment order. To appreciate the facts on such issue, the Ld. Sr. DR for the revenue was directed to bring the assessment record. The assessment record was brought before the bench. On perusal of record we find that assessment order contain the reference of issuance of notice under section 143(2). However, no corresponding postal

receipt is available on record. Though, the assessment record contains the postal receipt of notice under section 148 and reasons recorded, as well as notices issued under section 133(6) by assessing officer. The assessment was carried in 2019 and more than five years has passed, the jurisdiction of assessing officer might have changed, in the mean time, so there is possibility that such postal receipt may have missed.

9. On careful perusal of material on record we find neither the assessee raised non-issuance of notice during the assessment nor such issue was raised before the Ld. CIT(A) while filing first appeal. Similarly, no grounds of appeal was raised before the Ld. CIT(A) against validity of reopening. Bothe such legal issues are raised for the first time before the Tribunal. The assessee has not filed any application for seeking permission to the raise grounds of appeal either on validity of re-opening or notice under section 143(2). Even while filing additional ground on non issuance of notice, the assessee in its application dated 26.08.2024, simply contended that they are attaching additional ground of appeal the same being purely legal and goes to root of the case. No basis of filing such application is disclosed, whether it requires the investigation of fact or not. We find that the assessee has is challenging assessment proceeding for the first time before the Tribunal on the ground of issuance of notice under section 143(2). Thus, considering the overall facts of the present case, the additional ground of appeal on non-issuance of notices as well as validity of reopening are admitted and matter is remitted back to the file of the Ld. CIT(A) for considering and adjudication of both the grounds of appeal in accordance with law. Similarly, on merit we find that the addition in account of business income as

well as unexplained credit under section 68 by lower authorities for the want of evidence. Thus, on merit the appeal is restored back to the file of the Ld. CIT(A) to adjudication both the issue afresh. Needless to direct that before passing the order of Ld. CIT(A) shall allowed opportunity to the assessee. The assessee is also directed to file all the return and evidence and to participate in the proceeding before the Ld. CIT(A).

10. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in open court on 30.05.2025.

Sd/-
(GIRISH AGRAWAL)
ACCOUNTANT MEMBER

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Mumbai; Dated 30/05/2025
Disha Raut, *Steno*

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai