

आयकर अपीलीय अधिकरण
कोलकाता 'एसएमसी' पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'SMC' 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.: 1328/KOL/2024
Assessment Year: 2017-18**

***Nabiul Industrial Metal Pvt. Ltd.....Appellant
[PAN: AAECN 3170 B]***

Vs.

ITO, IT Department, NFAC, Delhi.....Respondent

Appearances:

Assessee represented by: S.K. Tulsiyan, Adv.

Department represented by: Anindya Kumar Bandopadhyay, Addl. CIT.

Date of concluding the hearing : August 5th, 2024

Date of pronouncing the order : October 15th, 2024

ORDER

Per Pradip Kumar Choubey, Judicial Member:

This appeal filed by the assessee pertaining to the Assessment Year (in short 'AY') 2017-18 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 27.05.2024 arising out of the assessment order framed u/s 147/144/144B of the Act dated 31.03.2022.

1.1. The brief facts of the case of the appellant are that the assessee Nabiul Industrial Metal Pvt. Ltd. did not file the return of income for the AY 2017-18 as a result of which case of the assessee was re-opened u/s 147 of the Act.

The Assessing Officer (hereinafter referred to as Id. 'AO') received information from the investigation wing, Kolkata wherein it was mentioned that in course of the investigation in the case of M/s. Darsh Coke Trading Pvt. Ltd., it was revealed that the said company is a paper company through which entry operators provide bogus entries and layer money in exchange of commission. It was also found that the one of the beneficiaries is the assessee company which has received Rs. 15,00,000/- from a paper concern namely Tanishi Commotrades Pvt. Ltd. During the course of re-assessment, the assessee was asked to explain the transactions with Tanishi Commotrades Pvt. Ltd. In response, the assessee submitted that in the current year i.e. FY 2016-17 the assessee took a loan/ advance from this party against sale of goods and in the immediately succeeding year i.e. FY 2017-18 sales were made to Tanishi Commotrades Pvt. Ltd and said sale was duly credited in the Profit and Loss account of the company and tax was duly paid. However, the AO was not convinced with the submission filed by the assessee and accordingly, added the sum of Rs. 15,00,000/- to the income of the assessee u/s 68 of the Act. The said assessment order has been challenged before the Id. CIT(A) wherein in absence of any response from the appellant the case of the assessee has been dismissed.

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

1.2. The Id. Counsel for the assessee challenges the impugned order by taking several grounds but he, in course of hearing, took an additional ground being the legal ground and he pressed only legal ground which are as follows:

“That the National Faceless Assessment Centre erred in having assumed jurisdiction u/s 151A r.w.s 144B of the Act from 29.11.2021 when they were not empowered under any notification about the applicability of the faceless scheme for making assessment in faceless manner prior to 29.03.2022.”

1.3. Id. Counsel for the assessee submitted that the provisions of Section 151A of the Act came in the statute on 01.11.2021 but it was notified with effect from 29.03.2022. But in the present case, assessment proceedings to

the NFAC started on 29.11.2021 which is evident from the notice u/s 142(1) of the Act. Ld. Counsel for the assessee further submits that the show cause notice has also been issued and the date has been mentioned as 28.03.2022 that is prior to 29.03.2022. Ld. Counsel for the assessee further submits that the assumption of jurisdiction by the NFAC was without jurisdiction. Consequently, the whole assessment is without jurisdiction and unsustainable in law. Ld. Counsel for the assessee further drew the attention of this Bench on the issuance of show cause notice and submitted that it was served on 29.03.2022 and asked the assessee to furnish explanation on or before 29.03.2022, it means without giving the assessee any opportunity before framing of the assessment order. Ld. Counsel for the assessee has filed the following papers:

- a) Notification of Ministry of Finance dated 29.03.2022.
- b) Notice issued u/s 142(1) of the Act.
- c) Show cause notice dated 28.03.2022.

1.4. Ld. D/R though supports the impugned order but did not raise any objection on the legal ground.

2. We have perused the records and the papers filed by the assessee. It appears that Notification with respect to Section 151A of the Act has been made with effect from 29.03.2022 which is as under:

“S.O. 1466(E).—In exercise of the powers conferred by sub-sections (1) and (2) of section 151A of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby makes the following Scheme, namely:-

1. Short title and commencement.—(1) This Scheme may be called the e-Assessment of Income Escaping Assessment Scheme, 2022.

(2) It shall come into force with effect from the date of its publication in the Official Gazette.

2. Definitions.—(1) In this Scheme, unless the context otherwise requires, —

(a) “Act” means the Income-tax Act, 1961 (43 of 1961);

(b) “automated allocation” means an algorithm for randomised allocation of cases, by using suitable technological tools, including artificial intelligence and machine learning, with a view to optimise the use of resources.

(2) Words and expressions used herein and not defined, but defined in the Act, shall have the meaning respectively assigned to them in the Act.

3. Scope of the Scheme.—For the purpose of this Scheme,—

(a) assessment, reassessment or re-computation under section 147 of the Act,

(b) issuance of notice under section 148 of the Act,

shall be through automated allocation, in accordance with risk management strategy formulated by the Board as referred to in section 148 of the Act for issuance of notice, and in a faceless manner, to the extent provided in section 144B of the Act with reference to making assessment or reassessment of total income or loss of assessee.”

2.1. We have also gone through the notice u/s 142(1) of the Act dated 29.11.2021 which is as follows:

| | | | |
|--|---|--|----------------------------|
|  | GOVERNMENT OF INDIA MINISTRY OF FINANCE INCOME TAX DEPARTMENT National Faceless Assessment Centre Delhi |  | |
|  | To, NABIUL INDUSTRIAL METAL PRIVATE LIMITED VILL AND POST DHADIMBA, DIST PASCHIM MEDINIPUR MIDNAPORE 721301, West Bengal India | | |
| | PAN: AAECN3170B | Assessment Year: 2017-18 | Date: 29/11/2021 |
| Notice under sub-section (1) of Section 142 of the Income Tax Act, 1961 | | | |
| Dear Taxpayer, | | | |
| Kindly refer to ongoing assessment proceedings in your case for A.Y. 2017-18 under Faceless Assessment Scheme, 2019. | | | |
| 2. We appreciate the anxiety and uncertainty that is facing all of us in the times of Covid-19. This communication is to assist you in ending one uncertainty, which is pending e-Assessment in your case for the Assessment Year 2017-18. | | | |
| 3. You are requested and required to kindly furnish or cause to be furnished on or before 06/12/2021 by 03:14 PM, the accounts and documents specified in the Annexure to this notice. | | | |
| 4. The accounts or documents, as mentioned above, are required to be submitted online electronically in 'E-proceedings' facility through your account in e-Filing website (www.incometaxindiaefiling.gov.in) | | | |
| Yours faithfully, Additional / Joint / Deputy / Assistant Commissioner of Income Tax, National Faceless Assessment Centre, Delhi | | | |
| <small>Note:- The website address of the e-filing portal has been changed from www.incometaxindiaefiling.gov.in to www.incometax.gov.in.</small> | | | |

2.2. We further find the show cause notice issued that also reflects the date 28.03.2022 which is as follows:



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
National Faceless Assessment Centre
Delhi



| | |
|--|--|
| To, NABIUL INDUSTRIAL METAL PRIVATE LIMITED VILL AND POST DHADIMBA ,DIST PASCHIM MEDINIPUR MIDNAPORE 721301 ,West Bengal India | |
|--|--|

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|---------------------------|------------------------------------|----------------------------|--|
| PAN: AAECN3170B | Assessment Year: 2017-18 | Date: 28/03/2022 | DIN: ITBA/AST/F/144(SCN)/2021-22/1041862917(1) |
|---------------------------|------------------------------------|----------------------------|--|

Show cause Notice as to why the proposed variation should not be made

Ms/ Mr/ M/s,

1. We appreciate the anxiety and uncertainty that is facing all of us in the times of Covid-19. This communication is to assist you in ending one uncertainty, which is pending e-Assessment in your case for the Assessment Year 2017-18.
2. The variations as per the draft assessment order may be seen which are proposed to be made in your case:-

This order is passed under section 144 rws 147 rws 144B

The assessee had not filed its return of income for the A.Y.2017-18. Subsequently, the case of the assessee was reopened u/s.147 of the I.T Act after recording the following reason for reopening the case:

Reasons for re-opening of the assessment in case of Nabiul Industrial Metal Pvt Ltd for assessment year 2017-18 u/s.147 of the I. T. Act, 1961.

1. Brief details of the assessee :

As per e-filing records, the assessee company has not filed its return of income for the relevant assessment year.

1. Brief details of information collected/received by the AO :

Information has been received from The DDIT (Inv), Unit-4(2), Kolkata, stating that during the course of investigation in the case of M/s. Darsh Coke Trading Pvt. Ltd.(PAN

Note:- The website address of the e-filing portal has been changed from www.incometaxindiaefiling.gov.in to www.incometax.gov.in.

| | | |
|------|--|---------------------|
| Add: | Addition u/s 68 of the Act (As discussed in para4.7) | Rs.15,00,000/- |
| Add: | Income (Estimated as per para 6 to 6.3) | Rs.3,95,816/- |
| | Assessed Income | Rs.18,95,816 |

8. Considering the principle of natural Justice, you are hereby accorded one more final opportunity to divergent yourself with documentary evidences to substantiate the sources of income received during the year under consideration . Therefore, you are hereby show caused as to why the amount of Rs.15,00,000/- should not be considered as unexplained cash credit and Rs.3,95,816/- the income from business added to the total income for the year under consideration.

9. You are given an opportunity to represent your case by furnishing your explanation(s), if any, on or before 29.03.2022 falling which the assessment would be completed as mentioned above.

You are hereby given an opportunity to show cause why proposed variation should not be made and the assessment should not be completed accordingly.

3. Kindly submit your response through your registered e-filing account at www.incometax.gov.in by 23:59 hours of 29/03/2022, whereby you may either:-

- a. accept the proposed variation; or
- b. file your written reply objecting to the proposed variation; or
- c.If required, after filing written reply you may request for personal hearing so as to make oral submissions or present your case. The request can only be made by clicking the Seek Video Conferencing button available against the SCN , in the view notices of this proceeding in the e-proceedings tab on e-filing portal. The request can be made only before expiry of compliance date & time. On approval of request, personal hearing shall be conducted exclusively through video conference.

4. In case no response is received by the given time and date, the assessment shall be finalized as per the draft assessment order.

Yours faithfully,
 Additional / Joint / Deputy / Assistant Commissioner of Income Tax/
 Income-tax Officer,

National Faceless Assessment Centre,
Delhi



Digitally signed by Prakash Prakash
Date: 2022.03.29 00:20:37 IST

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2.3. It appears from the show cause notice issued on 28.03.2022 that at the bottom of the page it was digitally signed thereby giving date 29.03.2022 at 00:20:37 IST.

2.4. We further find that in the show cause notice the assessee has been directed to furnish explanation on or before 29.03.2022. It is surprising that when it was issued on 29.03.2022 at 00:20:37 IST and directed the assessee to explain the explanation before 29.03.2022.

3. Keeping in view the entire facts and discussions made above, we find substance in the argument of the Id. CIT(A) that assumption of jurisdiction prior to 29.03.2022 by the Id. AO is to be held to be without jurisdiction. Accordingly, the assessment order, passed, is to be deemed without

jurisdiction. Subsequently, all the orders passed are hereby held to be without jurisdiction.

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

Order pronounced in the open Court on 15th October, 2024.

Sd/-

[Rajesh Kumar]
Accountant Member

Sd/-

[Pradip Kumar Choubey]
Judicial Member

Dated: 15.10.2024

Bidhan (P.S.)

Copy of the order forwarded to:

- 1. Nabiul Industrial Metal Pvt. Ltd., Vill & PO - Dhadimba, Kharagpur, Paschim Medinipur, West Bengal, 721301.**
- 2. ITO, IT Department, NFAC, Delhi.**
- CIT(A)-NFAC, Delhi.
- CIT-
- CIT(DR), Kolkata Benches, Kolkata.

//True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata