IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "SMC", MUMBAI

BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER AND
SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER

ITA No.252/M/2022
Assessment Year: 2012-13

M/s. Magic IT Solutions Pvt. Ltd., B-25/26, Matruchaya Building, S.N. Road, Mulund (West), **PAN: AAGCM3180L**	Vs.	Commissioner of Income Tax (Appeals)-24, Mumbai
(Appellant)		(Respondent)

Present for:
Assessee by : Shri Abhishek Jhunjhunwala, A.R.
Revenue by : Shri Kiran P. Unavekar, D.R.

Date of Hearing : 31.05.2022
Date of Pronouncement : 31.05.2022

O R D E R

Per Kuldip Singh, Judicial Member:

The appellant, M/s. Magic IT Solutions Pvt. Ltd (hereinafter referred to as 'the assessee') by filing the present appeal, sought to set aside the impugned order dated 30.08.2019 passed by the Commissioner of Income Tax (Appeals), (hereinafter referred to as CIT(A)] on the grounds inter alia that:

> ***"The appellant company prefers an appeal against an order dated 30/08/2019 passed by Ld. Commissioner of Income Tax (Appeal)24, Mumbai on following amongst other grounds each of which are without prejudice to any other: -***
>
> ***1.0 The Ld. C1T(A) erred in passing the order exparte without considering the bonafide reasons and compelling circumstances***

precluding the appellant to furnish the details/ documents before Ld.CIT(A);

2.0 On facts and circumstances of the case and in Law, Ld. C1T(A) erred in confirming the addition u/s.69 of alleged unexplained investment for purchase of Diesel Generator set of Rs.20,00,000/-;

3.0 On facts and circumstances of the case and in Law, Ld. CIT(A) erred in confirming the addition u/s.69C of alleged unexplained expenditure incurred on installation of Diesel Generator set of Rs.1,50,000/-;

4.0 On facts and circumstances of the case and in Law, Ld. CIT(A) erred in confirming the disallowance of interest and expense u/s.l4A r.w.r, 8D of Rs.3,37,770/-, though the appellant had earned the exempt dividend of Rs.28500/-.

The appellant craves leave to add, amend, alter, and/or withdraw any of the 'grounds of appeal at the time of hearing."

2. Present appeal has been filed by the assessee company with delay of 103 days and sought to condone the same on the ground that the order passed by the Ld. CIT(A) has never been served upon the assessee having been sent on non functional office address situated at B-25/26, Matruchaya Building, SN Road, Mulund (W) Mumbai, whereas correct communication address is mentioned in the form No.35 appeal memo. Director of the assessee also has given the reason for not filing the appeal well within the limitation that due to ongoing investigation against him under Goods and Service Tax law and he remained in judicial custody from 21.06.2021 to 21.08.2021. All these allegations are supported with affidavit of Mr. Vinod Rupani, Managing Director of the assessee company. So we find reasonable cause with the assessee not to file the appeal within time, hence the delay of 103 days is hereby allowed. Appeal is ordered to be registered.

3. Briefly stated facts necessary for adjudication of the controversy at hand are : assessee company is into the business of

IT enabled and BPO service provider. During the scrutiny proceedings Assessing Officer (AO) noticed that the assessee has claimed generator installation charges of Rs.1,50,000/- purchased from M/s/ Comfort Project Ltd. for a consideration of Rs.20 lakhs on 25.07.2011 but has not shown any assets in its balance sheet qua the year under consideration. On failure of the assessee to prove any detail/supporting evidence AO proceeded to disallow an amount of Rs.20 lakhs under section 69 of the Income Tax Act, 1961 (for short 'the Act'). AO also disallowed an amount of Rs.1,50,000/- claimed by the assessee as installation charges of DG set. AO also noticed that the assessee has received dividend of Rs.28,500/- and claimed exemption under section 10(34) of the Act. AO by disagreeing with the assessee invoked the provisions contained under section 14A read with rule 8D disallowed the amount of Rs.3,37,770/- and thereby framed the assessment at the total income of Rs.24,87,770/-.

4. Assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has upheld the disallowance/addition made by the AO by dismissing the appeal. Feeling aggrieved with the impugned order assessee has come up before the Tribunal by way of filing present appeal.

5. We have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

6. Bare perusal of the findings returned by the Ld. CIT(A) in para 2.5.1 of the impugned order shows that the assessee company remained unrepresented before the Ld. CIT(A). It is also not mentioned if notice of the appeal was ever served upon the assessee. It is merely mentioned in the impugned order that several opportunities of hearing were given to the assessee but it failed to avail of the same. Ld. A.R. for the assessee submitted that no notice has ever been served upon the assessee in this appeal rather notice of hearing was sent on incorrect address as is evident from the copy of notice available at page 5 & 6 of the paper book as against the correct address mentioned in form No.35 filed before the Ld. CIT(A), copy of which is available at page 7 & 8 of the paper book.

7. So in view of the matter without entering into the merits of the case, we are of the considered view that when adequate opportunity of being heard has not been given to the assessee, the findings returned by the Ld. CIT(A) are not sustainable in the eyes of law. So we hereby remit this case back to the Ld. CIT(A) to decide afresh after providing opportunity of being heard to the assessee.

8. Consequently, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 31.05.2022.

Sd/-	**Sd/-**
(OM PRAKASH KANT)	**(KULDIP SINGH)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai, Dated: 31.05.2022.
* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.