

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

BEFORE SHRI G.S.PANNU, ACCOUNTANT MEMBER

ITA No.3170/Mum/2017
(Assessment Year 2011-12)

Mr. Nilesh Solanki,
Shop No.6 & 7, Pandit Chawl,
Carter Road No.3, Borivali (E),
Mumbai 400 066
PAN:ANUPS2162

..... Appellant

Vs.

The Income Tax Officer 32(2)(4),
Mumbai.

.... Respondent

Appellant by : Shri Anil Thakkar
Respondent by : Ms. Hemalatha

Date of hearing : 12/07/2017
Date of pronouncement : 06/10/2017

ORDER

The captioned appeal filed by the assessee pertaining to assessment year 2011-12 is directed against an order passed by CIT(A)-44 Mumbai dated 14/02/2017, which in turn, arises out of an order passed by the Assessing Officer under section 143(3) of the Income Tax Act, 1961 (in short 'the Act') dated 18/03/2014.

2. In this appeal, the only addition in dispute is a sum of Rs.14,04,320/- (assessee's share being 50% i.e. Rs.7,02,160/-) made to the returned income on account of unproved liability. In brief, the relevant facts are that assessee is engaged in the business of embroidery work and during the year under

consideration he along with his brother had constructed a factory shed on the land owned by them, which was sold for a total consideration of Rs.60,00,000/-

. In para-5 of the assessment order Assessing Officer has reproduced the working of the profit earned by the assessee on such transaction at Rs.67,258/- and assessee's share being Rs.33,629/- (i.e. 50%). In the said working, total cost of construction including cost of purchase of plot has been shown at Rs.58,32,742/-. The Assessing Officer has not accepted the expenditure of Rs.14,04,320/- comprising of painting to work inside, painting to work outside, paver block purchase, electrical fittings/fixtures and other purchases/wages paid. The Assessing Officer has discussed the issue at para 5.3 of the assessment order and rejected the aforesaid expenditure as being unproved on the ground that assessee has not submitted requisite evidence in the form identity of persons or proper bills/vouchers, etc.

3. Before the CIT(A), assessee furnished complete details , but CIT(A) did not consider such evidence on the ground that it was an additional evidence which was not produced before the Assessing Officer. As per the CIT(A), none of the conditions prescribed in Rule 46A of the Income Tax Rules, 1962 (in short " the Rules") governing the admission of additional evidence were fulfilled and, therefore, he affirmed the addition made by the Assessing Officer.

4. Before me, Ld. Representative for the assessee pointed out that the additional evidence produced by the assessee showed complete details of the impugned expenditure and that there was no justification to reject the same, inasmuch as, assessee was never called upon to produce such details by the Assessing Officer. He, therefore, contended that the CIT(A) has wrongly

rejected the evidence and submitted that the matter be restored back to the file of the Assessing Officer for appropriate appreciation of the details of expenditure.

5. Before me, the Ld. Departmental Representative has defended the finding of the Assessing Officer as well as CIT(A) by pointing out that it was for the assessee to produce the evidence for justification of the expenditure.

6. I have carefully considered the rival submissions. Ostensibly, the aforementioned expenses have been rejected by the Assessing Officer primarily on the ground that assessee neither furnished the evidence nor explained the rationale for incurring such expenditure. The counter plea of the assessee is that he was never called upon to produce such details by the Assessing Officer and when he produced the same, the CIT(A) has summarily rejected the claim of expenditure. I find weight in the plea sought to be raised by the assessee because in para-5.1 of the assessment order the Assessing Officer has reproduced the query letter dated 07/2/2014 addressed to the assessee on this aspect. In the said communication there is no requirement put to the assessee to explain the rationale or furnish the details of the impugned expenditure. So however, thereafter, in para 5.3, the Assessing Officer has disallowed the expenses claimed by the assessee on painting to work inside, painting to work outside, paver block purchase, electrical fittings/fixtures and other purchases/wages paid of Rs.14,04,320/- on the ground that the assessee has not furnished the requisite evidence. In my view, it would be in the fitness of things that the assessee may be allowed to furnish requisite details and only thereafter, the Assessing Officer may decide the issue afresh as per law. Accordingly, the matter is restored back to the file of the Assessing Officer.

Needless to say, the Assessing Officer shall allow the assessee a reasonable opportunity to produce requisite evidence in relation to the expenditure of Rs.14,04,320/- and only thereafter, decide the issue afresh as per law.

7. In the result, appeal of the assessee is partly allowed for statistical purposes, as above.

Order pronounced in the open court on 06/10/2017

Sd/-
(G.S.PANNU)
ACCOCUNTANT MEMBER

Mumbai, Dated 06/10/2017

Vm, Sr. PS

Copy of the Order forwarded to :

1. The Appellant ,
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,
(Dy./Asstt. Registrar)
ITAT, Mumbai