

**IN THE INCOME TAX APPELLATE TRIBUNAL "B"
BENCH, MUMBAI**

**BEFORE SHRI G. S. PANNU, AM &
SHRI SANDEEP GOSAIN, JM**

आयकरअपीलसं./ I.T.A. No. 4421/Mum/2014,
(निर्धारणवर्ष / Assessment Year: 2007-08)

Smt Manisha K. Mehta A-103, Shiv Kesar Appt. St Xavier School Rd, Vile Parle(W), Mumbai-400056.	बनाम/ Vs.	ITO 21(1)(3) Mumbai Pin-
स्थायीलेखासं ./जीआइआरसं ./PAN/GIR No. AHIPM8130E		
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri Kamlesh Mehta
प्रत्यर्थीकीओरसे/Respondentby	:	Shri T. A. Khan

सुनवाईकीतारीख/ Date of Hearing	:	27/02/2018
घोषणाकीतारीख / Date of Pronouncement	:	19/03/2018

आदेश / ORDER

Per Sandeep Gosain, Judicial Member:

The present Appeal filed by the assessee is against the order of Ld. Commissioner of Income Tax (Appeal)-32, Mumbai dated 28.01.14.

2. Ld. AR appearing on behalf of the assessee drawn our attention to letter dated 18.03.17 which relates to condonation of delay in filing appeal before Hon'ble ITAT. Ld. AR submitted that the present appeal could not be filed within time because the father in law of assessee was hospitalized and therefore the assessee could not contact his authorized representative and due to which, there was a delay of 87 days in filing the present appeal.

3. On the other hand, Ld. DR requested for dismissal of the said application.

4. We have heard the counsels for both the parties on this application for seeking condonation of delay and while taking into consideration the contents of application filed by the assessee and following the principles laid down by Hon'ble Supreme Court in case of **“Land Acquisition Collector Vrs. MstKitzi, AIR 1987 S.C. 1353/(1987) 167 ITR 471 (SC)**, we condone the delay of 87 days in filing the appeal. Resultantly, this application is **allowed** and appeal is admitted to be *heard on merits*.

5. As per the facts of the present case, the assessee is earning income from Business from her proprietary concern M/s Manisha Enterprises. The return of income declaring total income of Rs. 1,32,163/- was filed on 31.10.07. Subsequently the case was selected for scrutiny and after serving statutory notices and providing opportunity of hearing to the assessee, order of assessment u/s 143(3) of the I.T. Act was passed, thereby making additions under different heads.

Aggrieved by the order of AO, assessee preferred appeal before Ld. CIT(A) and Ld. CIT(A) after considering the case of both the parties, partly allowed the appeal of the assessee.

Now before us, the assessee has preferred the present appeal by raising the grounds.

Ground No. I

6. This ground raised by the assessee relates to challenging the order of Ld. CIT(A) in confirming the disallowance of expenditure made by AO.

7. We have heard the counsels for both the parties and we have also perused the material placed on record as well as the orders passed by revenue authorities.

Before we decide the merits of the case, it is necessary to evaluate the orders passed by Ld. CIT(A). The Ld. CIT(A) has dealt with the above grounds raised by the assessee in para no. 6(6.1 to 6.5) in its order. The operative portion of the order of Ld. CIT(A) is contained in para no. 6.5 and the same is reproduced below:-

6.5 I have considered facts of the case, written submissions of the appellant and also the observations / findings of the AU in the assessment order and remand report. The submission and contentions of the appellant are being discussed and decided as under:-

i. The AO in the remand report has mentioned that the assessee has filed ledger account of expenses debited to P&L A/c and further the details and vouchers in respect of octroi charges and transportation charges.

ii. It is seen from the P&L A/c of the assessee that apart from the aforesaid expenses the appellant has debited rent (Rs.96,000), repairs for machinery (Rs.

1,950), salary and wages (Rs.2, 10,00Q), other expenses (Rs.56,950), commission (Rs.65,861), telephone Rs.52,750), audit fee (Rs.4,500), other expenses (Rs.73,820), interest (Rs.69,1 16), depreciation (Rs.34,175) totaling to Rs.5,78,722/-. The assessee has not submitted any bills and vouchers in support of such expenses. Under such facts and circumstances of the case it cannot be considered that all these expenses are wholly and exclusively incurred for, the business purposes. Accordingly the AO is directed to di.allow 25% of these expenses which works out to Rs. 1,44,680/-. The appellant gets consequential relief.

Accordingly, Ground No. 2.4 is partly allowed.

After having gone through the facts of the present case as well as considering the orders passed by revenue authorities and submissions made by both the parties, we find that in the present case, several notices were served by the AO upon the assessee but assessee did not respond to any of the notices. From the facts, we also noticed that the AO had also served notices upon the new address. Even the Ld. CIT(A) had supplied the copy of remand report called from the AO and gave sufficient opportunity to the

assessee to file his reply to the correctness of the said remand report, but the assessee filed no objections to the said remand report. Therefore Ld. CIT(A) had left with no other option except to decide the case on the basis of documents already on the record.

From the remand report, Ld. CIT(A) has correctly noticed that the AO has mentioned that the assessee has filed ledger account of expenses debited to P & L account and further the details and vouchers in respect of octrai charges and transportation charges. The rest of the amount of expenses pertaining to rent, repair, salary, commission, audit, depreciation, interest, etc amounting to Rs. 5,78,722/- are concerned, in this respect, no evidence was furnished by the assessee, therefore the same was rightly disallowed @ 25%, which works out to Rs. 1,44,680/-.

The assessee could not prove that all these expenses were wholly and exclusively incurred for the business purposes. Therefore, in these circumstances, we are of the view that Ld. CIT(A) has passed judicious and well reasoned order.

Moreover, no new facts or contrary judgments have been brought on record before us in order to controvert or rebut the findings recorded by Ld. CIT(A). Therefore, there are no reasons for us to interfere into or deviate from the findings recorded by the Ld.CIT(A). Hence, we are of the considered view that the findings so recorded by the Ld. CIT (A) are judicious and are well reasoned. Resultantly, this ground raised by the assessee stands **dismissed**.

Ground No. II

8. This ground raised by the assessee relates to challenging the order of Ld. CIT(A) in confirming the additions made by AO on account of liability ceased to exist of sundry creditors.

9. We have heard counsels for both the parties and we have also perused the material placed on record as well as the orders passed by revenue authorities.

Before we decide the merits of the case, it is necessary to evaluate the orders passed by Ld. CIT(A). The Ld. CIT(A) has dealt with the above grounds raised by the assessee in para no.

5(5.1 to 5.5) in its order. The operative portion of the order of Ld. CIT(A) is contained in para no. 5.5 and the same is reproduced below:-

5.5 I have considered facts of the case, written submissions of the appellant and also the observations / findings of the AO in the assessment order and remand report. The submission and contentions of the appellant are being discussed and decided as

i). The AO has mentioned that the assessee filed confirmations in respect of 9 parties where the amount is shown at Rs.953366.24 as against total amount of sundry creditors at Rs.78,31,442/-.

ii. The AO has further mentioned that the assessee has not filed any confirmation or material evidence for the balance shown against Bhikabhai Gordhandas 86 Co. whereas in the balance sheet for A.Y. 2006-07 the closing balance shown against the party was Rs. 154551.35.

iii. The AO further mentioned that against Ship Yard Co. and Suresh Parekh there are debit balance shown at Rs.889322.59 and Rs.1000000. He also mentioned that Ship Yard Co. is a loan creditor for Rs. 4 lacs.

iv. The assessee has not been able to controvert such factual observations and non submission of sundry creditors in respect of the balance amount of Rs.6878075.76 (Rs.7831442 — Rs.953366.24). In view of such facts and circumstances and the factual observations of the AO, disallowance at 20% of the creditors for which no confirmations have been submitted which comes to Rs.13,75,615/- is found to be justified. Accordingly the AO is directed to restrict the addition under this head to the amount of Rs.13,75,615/1 and the appellant gets consequential relief.

v. Therefore Grounds No. 2.2 86 2.3 are partly allowed.

Ld. AR submitted that the liability of the sundry creditors are still outstanding in the balance sheet as on the last date of relevant accounting year in the statement of accounts. It was also submitted that there was no material on the record to prove the said liability to cease to exist and even the assessee has not written off the said outstanding liabilities in the books of accounts. On the other hand, Ld. DR relied upon the orders passed by revenue authorities.

After having gone through the facts of the present case as well as considering the orders passed by revenue authorities and submissions made by both the parties, we find that Ld. CIT(A) has modified the orders passed by the AO by taking into consideration the remand report, as well as the confirmations in respect of 9 parties and deleted the said admissions on account of the above parties who have filed confirmation.

In respect of the parties/creditors, who have not filed their confirmations, the Ld. CIT(A) upheld the disallowance made by AO @ 20% of the total amount. The revenue authorities have not considered the fact that the liabilities of sundry creditors are still outstanding in the balance sheet and the assessee has not written off the said outstanding liabilities in the books of accounts.

To our mind, making disallowance on estimation basis in respect of sundry creditors is not known to law, therefore the orders passed by revenue authorities are not sustainable in the eyes of law. Hence in view of our above findings, we delete the disallowance made by AO in respect of sundry creditors. Resultantly, this ground raised by the assessee stands **allowed**.

Ground No. III

10. This ground raised by the assessee relates to challenging the order of Ld. CIT(A) in upholding the orders passed by AO in respect of levy of penalty u/s 271B for non-compliance u/s 44AB of the I.T. Act.

11. Ld. AR submitted that the assessee had submitted form No. 3CB and Form No. 3CD and audit reports u/s 44AB of the Act. It was further submitted that the said report was on the record and the accounts were duly signed by CA on 30.10.07 and the return was filed on 31.10.2007. Therefore, it was requested that penalty u/s 271B for non-compliance u/s 44AB may be deleted.

12. On the other hand Ld. DR relied upon the orders passed by revenue authorities.

13. We have heard counsels for both the parties and we have also perused the material placed on record as well as the orders passed by revenue authorities. We find that the AO had levied the penalty on the ground that sufficient opportunity was granted to

the assessee but even then the audit report was not submitted along with the return of income and was not produced during the course of assessment proceedings. However, the said ground was dismissed in appeal by holding that sufficient opportunities were granted to the assessee and hence the defence of the assessee was rejected.

Be that it may, considering the interest of justice, we set aside the order of Ld. CIT(A) and remit the matter back to the file of AO with a direction to pass afresh order on this ground on merits by considering the plea raised by the assessee.

Before parting, we may make it clear that our decision to restore the matter back to the file of AO shall in no way be construed as having any reflection or expression on the merits of the dispute, which shall be adjudicated by the AO independently in accordance with law. Resultantly this ground raised by the assessee is **allowed for statistical purposes.**

Ground No. IV

14. This ground is general in nature, thus requires no specific adjudication.

15. In the net result, the appeal filed by the assessee stands **allowed for statistical purposes.**

Order pronounced in the open court on 19th March 2018.

Sd/-

Sd/-

(G. S. Pannu)

(Sandeep Gosain)

लेखासदस्य / Accountant Member

न्यायिकसदस्य / Judicial Member

मुंबई Mumbai; दिनांक Dated : 19.03.2018

Sr.PS. Dhananjay

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार

(Dy./Asstt.Registrar)

आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai