

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

BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER

ITA NO.3631/MUM/2018 (A.Y: 2012-13)

Nikhil M. Shah (HUF) 22, Meera, 4 th Floor, L. D. Ruparel Marg, Mumbai – 400 006 PAN: AAMHS 7106 M	v.	I.T.O – 19(2)(4) Mumbai
(Appellant)		(Respondent)

Assessee by : Shri Snehal Shah
Department by : Shri Kailash Kanojiya

Date of Hearing : 11.02.2019
Date of Pronouncement : 29.03.2019

ORDER

PER C.N. PRASAD (JM)

1. This appeal is filed by the assessee against the order of the Learned Commissioner of Income Tax (Appeals)–51, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 18.04.2018 for the A.Y. 2012-13.
2. Assessee challenged the order of the Ld.CIT(A) in sustaining the disallowance made towards expenses and addition made towards undisclosed income in the assessment and also not admitting the

additional evidences produced in respect of its contentions. Assessee has raised the following grounds: -

- I.*
- 1. The CIT(A) erred in making an addition of Rs. 2,99,0687- under the head 'Income from other sources' on account of difference in figures of income received from M/s. Viom Networks Ltd. in Form 26AS and as declared by appellant in return of income.*
 - 2. He further erred in not admitting the additional evidence under rule 46A of the Income Tax Act, 1961 and the appellant was thus prevented by sufficient cause from producing the evidence.*
 - 3. The appellant therefore prays that the addition be deleted.*

Without prejudice to above,

- II*
- 1. CIT(A) erred in confirming the disallowance of various expenses amounting to Rs. 11,37,0967-.*
 - 2. He further erred in not admitting the additional evidence under rule 46A of the Income Tax Act, 1961 and the appellant was thus prevented by sufficient cause from producing the evidence.*
 - 3. The appellant therefore prays that the deduction of Rs. 11,37,0967- be allowed to it."*

3. Before me on the preliminary ground of non-admission of additional evidences furnished before the Ld.CIT(A), Ld. Counsel for the assessee submitted that assessee was prevented with reasonable cause in not furnishing the additional evidences for the reason that its Authorized Representative (for short "AR") is a resident of Ahmadabad, though the assessee is given the information to the AR and in turn AR prepared submissions and instructed the staff of the assessee to file the same before the Assessing Officer, the same could not be filed before the Assessing Officer. It is submitted that since the additional evidences goes to the root of the matter Ld.CIT(A) should have admitted the same and adjudicated on merits.

4. Ld. DR opposed for admission of additional evidences.

5. On hearing both the sides and perusing the orders of the Authorities below, I am of the view that the Ld.CIT(A) should have admitted the additional evidences furnished by the assessee in support of its contentions without rejecting the evidences on technicalities. Ld.CIT(A) has coterminous powers of the A.O and thus he should have examined the evidences by calling for remand report from A.O. In any case the assessee appears to have reasonable cause in not furnishing the additional evidences before the Assessing Officer. In the circumstances, I feel it appropriate to restore these two issues in grounds of appeal to the file of the Assessing Officer for denovo adjudication. The assessee is at liberty to file evidences in support of its contentions. Thus, I restore both these grounds of appeal to the file of the Assessing Officer for fresh adjudication in accordance with law after providing adequate opportunity of being heard to the assessee.

6. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on the 29th March, 2019

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER
Mumbai / Dated 29/03/2019
Giridhar, Sr.PS

Copy of the Order forwarded to:

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

BY ORDER

(Asstt. Registrar)
ITAT, Mum