

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI
Before Shri Shamim Yahya (AM) & Shri Pawan Singh (JM)

ITA No. 5595/Mum/2018(Assessment year : 2011-12)

Dilip Ghanshamdas Mohatta 1, Parikh Chambers, 205, Pandurang Naik Road, Shivaji Park, Mahim, Mumbai-400 016 PAN : AABMP6743P	Vs	ITO, 21(1)-3, Piramal Chambers, Lalbaug , Mumbai -400012
APPELLANT		RESPONDEDNT

Appellant by	Shri Rakesh H Milwani
Respondent by	Shri Akhtar H Ansari

Date of hearing	20-11-2019
Date of pronouncement	25-11-2019

ORDER

Per Pawan Singh, JM :

1. This appeal filed by the assessee is directed against the order of CIT(A)-48, Mumbai dated 30-08-2018 for the assessment year 2011-12. The assessee has raised the following grounds of appeal:-

" 1. Considering the facts and circumstances of the case, the Learned Commissioner of Income Tax (Appeals) - 48, Mumbai (hereinafter, for the sake of brevity, referred to as 'the CIT(A)') erred on facts and in law in dismissing the appeal of the appellant on the ground that the appellant has not appeared before him without appreciating the fact that the appellant had already uploaded, under his digital signature, the submissions on which the appellant chose to rely, at the designated Income Tax Portal where a provision for submission to the CIT(A) has to be made.

2. Considering the facts and circumstances of the case, the CIT(A) erred on facts and in law in dismissing the appeal of the appellant without considering the facts of the case and grounds of appeal before the CIT(A).

3. Considering the facts and circumstances of the case, order of the CIT(A) dismissing the appeal be set aside and the CIT(A) be directed to rehear the appellant before deciding the appeal.

4. Considering the facts and circumstances of the case, the exercise of power by the Assessing Officer under section 147 of the Income Tax Act, 1961, exercising the power of re-opening of assessment be declared as bad in law and void abinitio and assessment made in consequent thereof also be declared as such.

5. Considering the facts and circumstances of the case, the CITA) after admitting that the Statement of Facts have not been disputed by the Assessing Officer ought to have considered the statement of facts and decided the appeal in favour of the appellant.

6. Considering the facts and circumstances of the case, the CITA) ought to have deleted the additions made to the income of the appellant or alternately have reduced them substantially.”

2. The brief facts of the case are that the assessee is an individual and is engaged in the business of trading and manufacturing engineering goods, chemicals and plastic tubes, filed its return of income on 05-09-2011 declaring total income at Rs.2,05,983/- which was processed u/s 143(1) of the Income-tax Act (Act). The assessment was re-opened under section 147 on the basis of information received from Sale Tax Department, Government of Maharashtra informing that certain hawala operators were indulging in providing accommodation bills without actual delivery of goods. The Sale Tax Department, Government of Maharashtra referred the list of such hawala dealers and the beneficiary to the DGIT (Investigation), Mumbai. The name of assessee appeared in the list of beneficiaries. The

assessee allegedly made the purchases of Rs. 22,41,865/- from such hawala dealers. On the basis of information, the Assessing Officer made a belief that the income of the assessee escaped assessment, therefore, re-opened the assessment under section 147. Notice under section 148 dated 04-03-2016 was issued to the assessee. The assessee, in response, vide letter dated 14-03-2016 submitted that the return of income already filed may be treated as return filed in response to notice u/s 148. The assessing officer then issued notices u/s 143(2) and 142(1) along with a questionnaire. During the assessment, the Assessing Officer noted that the assessee has shown purchases from the following parties, who were declared as hawala dealers by the Sale Tax Department, Government of Maharashtra:

	Name of the parties	Bill amount (Rs.)
1	Harishi Ferromety P Ltd	39,466
2	Parvesh Entepriises	22,02,390
	Total Amount	22,41,865

3. After analysing the books of the assessee and the evidences furnished by assessee, the AO concluded that the purchases made by assessee from the above parties were not genuine as claimed and debited in his P&L account. The AO rejected the books of account of the assessee. The AO concluded that by showing the purchases from hawala parties, the assessee suppressed the profit to reduce the tax liability. The AO

accordingly disallowed 24.62% of the non genuine purchases being the profit ratio on the genuine purchases. The assessee filed appeal before Ld. CIT(A) , which was dismissed the ex-parte without discussing the issue on merit. Further aggrieved, assessee has filed further appeal before us.

4. We have heard the submissions of the Ld.AR for the assessee and the Ld. DR of the revenue. At the outset of hearing, the Ld.AR of the assessee submits that the assessee uploaded all the submission on the portal of Ld. CIT(A). The Ld. AR of the assessee furnished the acknowledgement of uploading the necessary information / submission, in the form of various PDFs. The Ld.AR of the assessee submits that the assessee was neither heard on merit nor granted sufficient opportunity of hearing by the Ld.CIT(A). The assessee submits that he has a good case on merit and will succeed in case the assessee is given hearing on merit. The Ld.AR of the assessee submits that matter may be restored to the file of Ld.CIT(A) for decision on merit.
5. On the other hand, the Ld. DR for the revenue supported the order of Ld. CIT(A). The Ld. DR submits that the assessee has not appeared before the Ld. CIT(A) despite service of notice and deserve no leniency at this stage.

6. We have considered the submissions of the Ld. representatives of the parties and perused the material available on record. Perusal of order shows that the Ld.CIT(A) has not discussed the merit of the case and dismissed the appeal by applying the ratio of decision in case of CIT vs Multiplan (I) Pvt Ltd 38 ITD 320(Del). Further perusal of order shows that at para 4 of impugned order, the Ld.CIT(A) has recorded that notice of hearing of appeal was sent for 18th July, 2018 & 30th July, 2018 and finally for 16-08-2018. The Ld. CIT(A) has not recorded its satisfaction whether the notices were duly served or returned unserved. We have further noted that the Ld.AR of the assessee has placed on record the acknowledgement regarding the submission and various documentary evidences including legal submission uploaded on the portal of CIT(A). Facts remain that the appeal of the assessee was decided without giving proper opportunity of hearing to the assessee and the case was not discussed on merit. The order of the ld CIT (A) is not in consonance with the mandates of the provisions of section 250(6) of the Act, Considering the facts and circumstances of the case, we deem it appropriate to restore the appeal of assessee to the file of the CIT(A) with the direction to decide the appeal on merit. Needless to order that before passing the order, the Ld .CIT(A) shall grant opportunity of hearing to the assessee.

The assessee is also directed to join the proceedings and to provide necessary information and evidences to the Id CIT(A) and not to seek adjournment without valid reasons.

7. In the result, appeal of the assessee is treated as allowed.

Order pronounced in the open court on 25-11-2019.

Sd/-

Sd/-

(Shamim Yahya)	(Pawan Singh)
ACCOUNTANT MEMBER	JUDICIALMEMBER

Mumbai, Dt : 25 November, 2019

Pk/-

Copy to :

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

/True copy/

By order

Asstt. Registrar, ITAT, Mumbai