

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "E", MUMBAI**

BEFORE SHRI M. BALAGANESH (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No. 1932/MUM/2014
Assessment Year: 2010-11**

M/s Satish Mandowara, 74G, Mangal Karni, Siddarth Nagar, Goregaon (W), Mumbai - 400062 PAN: ACWPM3495P	Vs.	The DCIT, Central Circle, 39 Mumbai
(Appellant)		(Respondent)

Assessee by : Shri Mukesh Chokshi (AR)
Revenue by : Shri Amit Pratap Singh (DR)

Date of Hearing: 27/11/2019
Date of Pronouncement: 20/02/2020

ORDER

PER RAM LAL NEGI, JM

This appeal has been filed by the assessee against the order dated 23.12.2013 passed by the Commissioner of Income Tax (Appeals)-41 (for short 'the CIT(A), Mumbai, for the assessment year 2010-11, whereby the Ld. CIT(A) has dismissed the appeal filed by the assessee against the assessment order passed u/s 144 of the Income Tax Act, 1961 (for short the 'Act').

2. Brief facts of the case are that the assessee a real estate broker, filed its return of income for the assessment year under consideration declaring taxable income of Rs. 1,62,760/- from commission. Since, the case was selected for scrutiny AO issued notice u/s 143 (2) and 142 (1) of the Act. In response thereof, the assessee submitted some of the documents. On verification, of data from AIR system, it was noticed that appellant had made cash deposit of Rs. 1,49,01,340/- in its bank account maintained with Axis Bank, Goregaon, Link Road Branch, Mumbai on 31.03.2010, vide three separate transactions. It was further noticed that appellant had transacted in shares to the tune of Rs.

21,92,664/- on 08.03.2010, 25.03.2010 and 31.03.2010. Accordingly, the AO asked the assessee to furnish explanation regarding cash deposit in bank account. However, the AO did not receive any response from the assessee. Accordingly, the AO passed assessment u/s 144 of the Act determining the total income of the assessee at Rs. 1,73,49,764/- after making addition of Rs. 1,49,01,340/- u/s 68 of the Act, Rs. 21,92,664/- u/s 69 of the Act and Rs. 93,000/- on account of insufficient drawings. The assessee challenged the assessment order before the Ld. CIT (A). During the appellate proceedings, the assessee failed to furnish the details and written submissions along with supporting documents despite several dates afforded by the Ld. CIT (A). Accordingly, the Ld. CIT (A) disposed of the appeal on the basis of material available on record and dismissed the appeal of the assessee. The assessee is in appeal against the said order passed by the Ld. CIT (A).

3. The assessee has challenged the impugned order on the following effective grounds:-

1. *“The Commissioner of Income tax (Appeals) -41 [“ the CIT (A) has erred in proceeding in appellant’s case on the basis of misconceived fact that the appellant’s premises were subjected to search u/s 132 of the I T Act, 1961 on 22.01.2009 and he was an associate of some Madan Kolambekar.*
2. *On the facts and in the circumstances of the case. The Commissioner of Income Tax (Appeals)-41[“CIT (A)] has erred in confirming the addition of Rs. 1,49,01,340/- made by the Assessing Officer based on the AIR information in respect of the cash deposits in the appellant’s bank accounts as unexplained cash deposit u/s 68 of the Income Tax Act, 1961.*
3. *On the facts and in the circumstances of the case the CIT (A) has erred in confirming the addition of Rs. 21,92,664/- made by the Assessing Officer based on the AIR information as unexplained investment u/s 69 of the Income Tax Act, 1961.*
4. *On the facts and in the circumstances of the case the CIT (A) erred in upholding addition of Rs. 93,000/- made by the Assessing Officer on account of insufficient drawings.”*

4. At the outset, the Ld. counsel for the assessee submitted that the Ld. CIT (A) has decided the appeal of the assessee without taking into consideration

that the AO had passed the assessment order without hearing the assessee. The Ld. counsel further submitted that even during the appellate proceedings, the assessee sought adjournments as the assessee was in the process of compiling the papers required for properly presenting its appeal. However, before completing the documents, the Ld. CIT (A) proceeded without taking on record, the documents and the explanations from the assessee. The Ld. counsel further submitted that the assessee did not receive some of the notices issued during assessment proceedings and appellate proceedings. In view of the aforesaid facts, the Ld. counsel submitted that the order passed by the Ld. CIT (A) may be set aside and the assessee may be given one more opportunity to present its case before the AO in the interest of justice.

5. On the other hand, the Ld. Departmental Representative (DR) opposed the submissions made by the Ld. counsel on the ground that since the assessee failed to furnish the details/submissions despite several opportunity afforded by the authorities below, no further opportunity should be granted to the assessee.

6. We have heard the rival submissions of the parties and carefully gone through the material on record. As pointed out by the Ld. counsel for the assessee, the AO has passed the assessment order u/s 144 of the Act, though, after sending several notices to the assessee on different dates. AO has mentioned in assessment order that the assessee responded to notice dated 10.10.2012 and furnished copies of P & L account, balance sheet, capital account, NAC Certificates, LIC receipts etc. However, from the order of the AO, it is not clear whether the notices sent on subsequent dates were actually received by the assessee as the same were sent by post. During the appellate proceedings, the assessee sought adjournments for submitting documents on the ground that it is in the process of compiling documents. From the aforesaid facts, it can be inferred that the assessee could not furnish the details/submissions before the authorities below. Since, the AO had passed the assessment order u/s 144 of the Act, the Ld. CIT (A) ought to have afforded sufficient time to the assessee to furnish the details/submissions. Hence, in

our considered view, the assessee should get one more opportunity to submit the documents and present its case before the AO in the interest of justice.

7. Hence, keeping in view the facts and circumstances of the case, we set aside the impugned order passed by the Ld. CIT (A) in the interest of justice and fairness and send this case back to the AO with the direction to pass assessment order afresh after affording a reasonable opportunity of being heard to the assessee.

In the result, appeal filed by the assessee for assessment year 2010-2011 is allowed for statistical purposes.

Order pronounced in the open court on 20th February, 2020.

Sd/-
(M. BALAGANESH)

ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated: 20/02/2020

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

Alindra, PS

आदेश प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai