

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“C” BENCH, MUMBAI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER &  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

**ITA No. 702/Mum/2017  
(Assessment Years: 2012-13)**

Collective Heads 520, Atlanta Estate, Near Viravani Estate, Goregaon (E), Mumbai – 400 063	<b>बनाम/ Vs.</b>	ACIT – 31(1) Mumbai.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAHFC2327F		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/ Appellant by :	Shri Subhash Shetty, AR
प्रत्यर्थी की ओर से/Respondent by :	Shri Mallikarjun Utture, DR

सुनवाई की तारीख / Date of Hearing	01/10/2020
घोषणा की तारीख/Date of Pronouncement	06/10/2020

**आदेश / ORDER**

**PER PAVAN KUMAR GADALE - JM:**

The assessee has filed an appeal against the order of CIT(A) -42, Mumbai passed u/s 143(3) and 250 of the Income Tax Act, 1961.

At the time of hearing, the Ld.AR submitted that there is a delay of 95 days in filing the appeal before the Tribunal and supported with condonation application and affidavit. The Ld.DR raised objections

on condonation of delay. We considered the facts in the application, and found the delay is reasonable. Accordingly, we condone the delay and the appeal is admitted and heard.

The assessee has raised the following grounds of appeal:

- “1. The Ld. CIT(A) committed a gross error of law and fact in enhancing the appellant’s income by Rs. 19,56,638/- on account of alleged cash credit in partners account and sale of scrap.*
- 2. The Ld. CIT(A) grossly erred in making an addition of Rs. 14,52,422/- u/s 68 of the Act on the ground of unexplained cash credit in partners account during the relevant previous year.*
- 3. The Ld. CIT(A) grossly erred in not appreciating the submissions of the appellant that whenever any fund is urgently required by the appellant during the course of its business, the same was brought by the partners from their personal source of income, which are already explained to the revenue.*
- 4. The Ld. CIT(A) committed a gross error of law and fact in making an addition of Rs. 5,04,216/- on account of sale of scrap purely on estimation without any basis whatsoever.*
- 5. The Ld. CIT(A) grossly erred in rejecting the submissions of the appellant that it had not earned income on sale of scrap”.*

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2. The brief facts of case are that the assessee is partnership firm engaged in the business of event management, integrated marketing communication agencies and filed the return of income for the A.Y 2012-13 on 29.09.2012 with a total income of Rs. 26,53,380/-. Subsequently, the case was selected for scrutiny and the notice u/s 143(2) and 142(1) of the Act were issued. In compliance, Ld. AR of the assessee appeared from time to time and submitted the details including tax audit report and financial statements. The A.O on perusal of the audited accounts found that the assessee has claimed expenditure which is in the nature of capital expenditure and disallowed the same. Similarly, A.O made disallowance u/s 40(a)(ia) of the Act for non deduction of TDS on expenses of Rs.10,67,607/- and disallowance u/s 40A(3) of the Act for cash payments exceeding the limit of Rs. 9,00,375/- and addition of undisclosed interest income on fixed deposits Rs. 58,760/-. The AO finally assessed the total income of Rs.56,90,260/- and passed the order u/s 143(3) of the Act dated 12.03.2015. Aggrieved by the order, the assessee has filed an appeal before the CIT(A). The Ld.CIT(A)

considered the grounds of appeal, findings of AO, submissions of the assessee and has granted partial relief on claims and partly allowed the appeal of the assessee. Aggrieved by the CIT(A) order, the assessee has filed an appeal with the Tribunal.

3. At the time of hearing, the Ld. AR of the assessee submitted that CIT(A) has erred in ignoring the facts that the assessee is a partnership firm and in its first year of business operations. The assessee has filed explanations on claims before the lower authorities and the CIT(A) has overlooked the information. Further the Ld.AR prayed for an opportunity to substantiate the case with the evidences. Contra, the Ld.DR supported the orders of the CIT(A).

4. We heard the rival submissions and perused the material on record. We considered the submissions of the Ld. AR on the aspects of first year of operations of the partnership firm. Further, the facts and the details filed by the assessee, play a vital role in decision making and whereas the CIT(A) has granted partial relief to the assessee. The contentions of the Ld. AR that no proper opportunity of hearing was

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provided before the CIT(A) to substantiate the case with supporting evidences. We considering the principles of natural justice, grant one more opportunity of hearing to the assessee. Accordingly, we set aside the order of CIT(A) and restore the entire disputed issue to the file of the CIT(A) to adjudicate afresh on merits and pass a speaking order. It is nevertheless to mention that, the assessee should be provided adequate opportunity of hearing and shall cooperate in submitting the information for early disposal of the appeal and the grounds of appeal of the assessee are allowed for statistical purposes.

6. In the result, the appeal filed by the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on 06.10.2020

Sd/-  
(SHAMIM YAHYA)  
**ACCOUNTANT MEMBER**

Sd/-  
(PAVAN KUMAR GADALE )  
**JUDICIAL MEMBER**

Mumbai, Dated 06/10/2020

KRK, PS

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

उप/सहायक पंजीकार ( Asst. Registrar)  
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Mumbai