



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

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND**  
**SHRI N.K. PRADHAN, ACCOUNTANT MEMBER**

ITA no.4813/Mum./2018  
(Assessment Year : 2007-08)

Jayendra P. Shah  
Kanddy Bridge, Opera House  
Mumbai 400 004  
PAN – ACAPS6080Q

..... Appellant

v/s

Income Tax Officer  
Ward-16(3)(3), Mumbai

..... Respondent

Revenue by : Shri Sushil Kumar Mishra  
Assessee by : None

Date of Hearing – 03.11.2020

Date of Order – 06.11.2020

**ORDER**

**PER SAKTIJIT DEY, J.M.**

Captioned appeal has been filed by the assessee challenging the order dated 28<sup>th</sup> May 2018, passed by the learned Commissioner of Income Tax (Appeals)-53, Mumbai, for the assessment year 2007-08.

2. The only ground raised by the assessee reads as under:-

*"The learned CIT (Appeals) did not give time to submit the supporting records and passed the order."*

3. Brief facts are, the assessee is an individual and carries on business in manufacturing of stainless patta, pattis and stainless steel utensils through his proprietary concern M/s. Metweld Industries. For the assessment year under dispute, the assessee filed his return of income on 31<sup>st</sup> October 2007, declaring total income of ₹ 6,20,275. In the course of assessment proceedings, the Assessing Officer, from time to time, called upon the assessee to furnish various details and evidences. In response to the notices issued by the Assessing Officer, it was submitted by the assessee that since the books of account and other documents were damaged/lost due to flood/inundation, they could not be produced. The Assessing Officer, however, did not accept the submissions of the assessee and proceeded to complete the assessment by making various disallowances/additions resulting in determination of total income at ₹ 23,61,862. Being aggrieved with the assessment order so passed, the assessee preferred appeal before the first appellate authority.

4. In the course of hearing before learned Commissioner (Appeals), the assessee made various submissions and also furnished evidences. The submissions made by the assessee and evidences furnished were forwarded to the Assessing Officer for verification and comment. After taking note of assessee's submissions, the report of the Assessing Officer and the facts and material on record, learned Commissioner

(Appeals) finally disposed off the appeal by the impugned order deleting some additions while sustaining the others.

2. When the appeal was called for hearing no one was present on behalf of the assessee to represent the case. There is no application seeking adjournment either. In view of the above and considering the nature of dispute, we proceed to dispose off the appeal ex-parte qua the assessee after hearing the learned Departmental Representative and on the basis of material available on record.

3. We have heard the learned Departmental Representative and perused the material on record. Undisputedly, while completing the assessment, the Assessing Officer has made various additions/disallowances as the assessee was unable to furnish the details called for. However, before learned Commissioner (Appeals), the assessee did furnish certain evidences which were forwarded to the Assessing Officer. On a careful reading of the impugned order of learned Commissioner (Appeals), it is noticed that he has specifically observed that the Assessing Officer has neither examined the evidences available/filed nor called for any such evidences to sustain the disallowance. He has further observed that the documents submitted by the assessee post-assessment, though, were available on record, but were not examined by the Assessing Officer during the remand proceedings and he has simply submitted a report stating that

it may be considered on merits. Thus, from the aforesaid facts, it is very much clear that the evidences furnished by the assessee before the first appellate authority, though, were forwarded to the Assessing Officer for due examination, however, he has not at all examined them. On the contrary, in the absence of any co-operation from the Assessing Officer, learned Commissioner (Appeals) has proceeded to decide the issues on the basis of evidences furnished and in the process has deleted certain additions while sustaining various other additions. Thus, on a perusal of the facts on record, prima facie, we are of the view that the evidences furnished by the assessee have not been properly examined. In fact, before learned Commissioner (Appeals), the assessee had submitted that he may be allowed a reasonable opportunity to furnish evidences. Thus, it appears from the facts on record that the additions/disallowances made are without proper appreciation of various evidences brought on record. Considering the above, we are of the view that the assessee deserves an opportunity to explain various issues relating to the additions made by the Assessing Officer with supporting evidences. Accordingly, we are inclined to set aside the impugned order of learned Commissioner (Appeals) and restore back the matter to the Assessing Officer for de novo adjudication of all the issues relating to additions/disallowances made by the Assessing Officer and sustained by learned Commissioner

(Appeals). The ground raised by the assessee is allowed for statistical purposes.

4. In the result, appeal is allowed for statistical purposes.

Order pronounced in the open court on 06.11.2020

**Sd/-**  
**N.K. PRADHAN**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**SAKTIJIT DEY**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 06.11.2020**

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

*Pradeep J. Chowdhury*  
*Sr. Private Secretary*

True Copy  
By Order

Assistant Registrar  
ITAT, Mumbai