

आयकर अपीलीय अधिकरण
मुंबई पीठ "एस एम सी" , मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI
श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER
आअसं. 2862/मुं/2019 (नि.व.2013-14)
ITA NO.2862/MUM/2019 (A.Y.2013-14)

Mr. Jitendra Ratilal Salot
Plot No.18, navyug CHS,
N.S. Road, JVPD Scheme,
Vile Parle, Mumbai-400056.

PAN: **AAFPS1865C**

..... अपीलार्थी /Appellant

बनाम Vs.

ITO Ward-11(3)(3)
Room No. 429, 4th Floor,
Aayakar Bhavan, M.K. Road,
Mumbai-400020

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Sh. Sandeep Chaturvedi

प्रतिवादी द्वारा/Respondent by : Sh. Sanjay J. Sethi

सुनवाई की तिथि/ Date of hearing : 31/05/2021

घोषणा की तिथि/ Date of pronouncement : 10/06/2021

आदेश/ ORDER

PER VIKAS AWASTHY, J.M:

This appeal by the assessee is against the order of Commissioner of Income Tax (Appeals)-18, Mumbai [hereinafter referred to as 'the CIT(A)'] dated 28.02.2019 for the Assessment Year (AY) 2013-14.

2. The assessee has assailed the order of CIT(A) on two counts i.e.

- (1) Disallowance of expenditure under section 69C of the Income Tax Act, 1961 [hereinafter referred to as 'the Act'] – Rs. 3,93,804/-
- (2) Adhoc disallowance of household expenditure under section 69C of the Act. – Rs. 4,80,000/-

3. Shri Sandeep Chaturvedi appearing on behalf of the assessee submitted that the assessee is a senior citizen. The assessee filed his return of income for AY 2013-14 on 30.04.2014 declaring total income of Rs. 31,60,240/-. The assessee has Income from Salary, House Property & Income from Other Sources. During assessment proceedings, the assessee interalia made disallowance of expenditure Rs. 3,93,804/-. The said expenditure was incurred by the assessee through Credit Card of HDFC Bank. The assessee is a director of M/s Vijay Latex Pvt. Ltd. & Vijay Sabre Safety Pvt. Ltd. The assessee has made payments through Credit Card in respect of expenditure incurred for the aforesaid company. The assessee had furnished the details before the AO on 16.03.2016 and again on 18.03.2016. Along with the details, the assessee furnished statements of Credit Card, however, the same were not considered by the AO in assessment proceeding. The Id. AR pointed that the assessee had furnished the statements before the AO, however, the AO declined to accept the same on the premises that the assessment order has been finalized, whereas the assessment order has passed on 21.03.2016. In First Appellate proceeding, the assessee brought this fact to the notice of CIT(A). The CIT(A) refused to accept the statements and disbelieved that the assessee furnished the details & statements before the Assessing Officer (AO).

4. In respect of ground no.2, the Id. AR submitted that the AO has made adhoc disallowance of Rs. 4,80,000/- in respect of household expenditure, the assessee had furnished the details, the AO rejected the same and proceeded on to estimate disallowance in respect of household expenditure. The Id. AR pointed that the assessee had furnished the details of the family to the AO, however, without appreciating the facts, the AO made addition. In First Appellate proceedings, the CIT(A) confirmed the disallowance without properly appreciating the submissions of the assessee and documents on record. The assessee has a family of six members. The estimation of monthly expenditure at Rs. 40,000/- per month by no stretch of imagination is reasonable. The Id. AR placed reliance on the decision of Tribunal in the case of Atul D. Pawar in ITA No. 1043/Mum/2012 decided on 13.02.2013 to contend that no disallowance on estimation should be made in respect of household expenditure.

5. Shri Sanjay Sethi representing the Department vehemently defended the impugned order and prayed for dismissing the appeal of assessee. The Id. DR submitted that the assessee had not brought on record any documentary evidences before the AO to substantiate his claim in respect of expenditure made through Credit Card.

6. Submissions made by both sides heard, orders of authorities below examined. In ground no.1 of appeal, the assessee has assailed disallowance of Rs.3,93,804/- paid through Credit Card in respect of M/s Vijay Sabre Safety Pvt. Ltd. The assessee purportedly furnished Credit Card statements before the

AO on 18.03.2016, the forwarding letter and the Credit Card statements are at page 38 to 52 of the Paper Book. The contention of the assessee is that the AO refused to accept the same on the pretext that the assessment order has been finalized, whereas the assessment order was passed on 21.03.2016. A perusal of the forwarding letter at page no.25 reveals that it does not bear the acknowledgement stamp of the office of the AO. Without deliberating and making further observation on whether documents were furnished by the assessee during assessment proceedings or not, I deem it appropriate to restore this issue to the file of AO for considering the statements furnished by the assessee vide letter dated 18.03.2016 and decide the issue afresh, after affording reasonable opportunity of hearing to the assessee, in accordance with law. The ground no.1 of the appeal is thus, allowed for statistical purpose.

7. In ground no.2 of appeal, the assessee has assailed addition of Rs. 4,80,000/- made in respect of household expenditure. The short contention of the assessee is that the addition has been made without appreciating the fact and without affording proper opportunity of hearing to the assessee. A perusal of the impugned order shows that CIT(A) has confirmed the addition by invoking the principles of 'preponderance of probability' in the absence of any cogent evidence. The Id. AR of the assessee contended that the assessee has furnished all the necessary evidences before the AO in support of his contention on this issue, however, the same has not been examined and adhoc disallowance has been made. I deem it appropriate to restore this issue as well to the file of AO for examining the documents furnished by the assessee in

support of his contentions. The AO shall grant reasonable opportunity of hearing to the assessee before deciding this issue, in accordance with law.

8. In the result, appeal of assessee is allowed for statistical purpose, in the terms aforesaid.

Order pronounced in the open court on **Thursday**, the **10th** day of June, 2021.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई/Mumbai, दिनांक/Dated: 10/06/2021

SK, PS

प्रतिलिपि अग्रेषित Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)
ITAT, Mumbai