

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC" MUMBAI**

**BEFORE SHRI SAKTIJIT DEY (JUDICIAL MEMBER) AND
SHRI MANISH BORAD (ACCOUNTANT MEMBER)**

**ITA No. 6004/MUM/2019
Assessment Year: 2009-10**

Suresh Kumar Laxmichand Jain,
15/1st floor, Mulji Mahadevji Bldg.
C P Tank,
Mumbai-400 002.

PAN No. AANPJ 9047 M

Appellant

ITO-18(3)4),
Vs. 608, Earnest House, Nariman
Point, Mumbai-400021.

Respondent

Assessee by : None
Revenue by : Ms. Smita Verma, DR

Date of Hearing : 11/08/2021
Date of pronouncement : 13/08/2021

ORDER

PER MANISH BORAD, A.M.

The present appeal is filed by the assessee against the order of the Commissioner of Income Tax (Appeals)-29, Mumbai [in short 'CIT(A)'] for the assessment year 2009-10 dated 30.05.2017 and arises out of assessment completed u/s 143(3) r.w.s. 147 of the Income Tax Act, 1961 (in short the Act).

Though the case was fixed for hearing on 23.06.2021 & 12.08.2021, neither the assessee nor his authorized representative appeared before the Bench on the above dates. As there is non-compliance on the part of the assessee, we are proceeding to dispose off this appeal on merits, after examining the documents available on record.

2. The grounds of appeal filed by the assessee read as under :

1. The Order passed by teamed CIT(A) is grossly erroneous, unjust and against the principles of natural justice.
2. The learned CIT(A) grossly erred in completing the Appellate Order without giving appropriate opportunity of being heard to the assessee.
3. The learned CIT(A) ought to have given due consideration to the fact that the registered address of the assessee was changed and hence he was not in position to receive the notice issued by the CIT office.
4. The learned CIT(A) erred in dismissing the Appeal filed by the assessee and thereby allowing the erroneous order passed by the AO.
5. The learned CIT (A) ought to have appreciated following anomalies observed by the AO while completing the assessment resulting from the proceedings initiated U/s. 148 of the Income tax Act, 1961.
6. The entire assessment completed by learned AO is based purely on the information received from Maharashtra Sales Tax Authorities. The learned AO never investigated the issue nor did he raise any additional evidence against the assessee that may implicate him as part of group of Bogus Bill Provider
7. The learned AO failed to provide the statement given by so called bogus bill provider which has implicated the assessee of having obtained bogus purchase bills from them. The AO not only should have provided with basic documents such as statements of the entry providers, copy of their books of account wherein the name of the assessee has been spotted and all other such documents.
8. The learned AO ought to have given chance to Cross Examine the entry providers based on whose statement the addition has been made. In fact, any addition made based on the statement taken at the back of the assessee is unjust and highly against the principles of natural justice.
9. The learned AO ought to have appreciated the fact that the entire transaction were completed by proper banking channels and all the necessary ingredients of trading transactions were followed appropriately.

10. The learned AO ought to have issued notice U/s. 131 of the Income tax Act, 1961 to various parties who allegedly had issued bogus bills to the assessee and should have established the correctness of their statements. It is worth noting that the Notice U/s. 131 is summon to witness which is to be compulsorily replied. Instead the AO chose to issue notice U/s. 133(6) of the Income tax Act^H1961 and put the onus on the assessee to produce those alleged parties based on whose statement he has made additions.
11. Your appellant humbly submit that the original assessment may be set aside and the appellant be given a fair chance to represent himself and be oblige.

3. None appeared on behalf of the assessee, we however on perusal of record observe that the impugned order framed by Ld. CIT(A) is *ex-parte* and Ld. CIT(A) has not dealt on merits of the case. The assessee has stated in the ground of appeal that the Ld. CIT(A) grossly erred in completing the appellate order without giving appropriate opportunity of being heard. It is also mentioned in the grounds of appeal that registered address of the assessee was changed.

4. The Ld. Departmental Representative (DR) also did not raised any objection if the issues raised in the instant appeal are restored to the Ld. CIT(A) for deciding them on merit.

5. We therefore, under the given facts and circumstances of the case and on observing that the impugned order is *ex-parte* and nothing has been dealt on merits by the Ld. CIT(A), the same deserves to be restored to the file of Ld. CIT(A) for deciding on merits and passing a speaking order after giving reasonable opportunity of being heard to the assessee. We also direct the assessee to comply to the notice received and should not take unnecessary adjournment unless otherwise required for reasonable cause. Thus, all grounds raised in this appeal are allowed for statistical purposes.

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

Order pronounced in the open Court on 13/08/2021.

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

Mumbai;

Dated: 13/08/2021.

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Assistant Registrar)
ITAT, Mumbai