

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'G' BENCH  
MUMBAI**

**BEFORE: SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
&**

**SHRI AMARJIT SINGH, JUDICIAL MEMBER**

**ITA No.3235/Mum/2017  
(Assessment Year :2012-13)**

Shri Sham Ganpat Chougule 82, Indage House Dr. A.B. Road, Worli Mumbai – 400 018	Vs.	The Asstt. Commissioner of Income Tax- 6(2)(1) Mumbai
<b>PAN/GIR No. ACVPC0933D</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	None
Revenue by	Shri T.S. Khalsa
<b>Date of Hearing</b>	<b>21/09/2021</b>
<b>Date of Pronouncement</b>	<b>06/10/2021</b>

**आदेश / O R D E R**

**PER AMARJIT SINGH (JM):**

The assessee has filed this appeal against the order dated 02/01/2017 passed by the Commissioner of Income Tax (Appeals)-12, Mumbai relevant to A.Y.2012-13.

2. The assessee has raised the following grounds:-

*1. The Learned Commissioner of Income Tax (Appeals) 12 on facts and in the circumstances of the case and in law erred in completing the assessment treating assessee as salaried employee.*

*2. The Learned Commissioner of Income Tax (Appeals) 12 on facts and in the circumstances of the case and in law erred in not considering the records available with him furnished by the appellate in proper perspective.*

*3. The Learned Commissioner of Income Tax (Appeals) 12 on facts and in the circumstances of the case and in law erred in treating a chairman of a group of companies as salaried employee and disallowed the business expenditure of Rs. 54,80,216/-.*

*4. The Learned Commissioner of Income Tax (Appeals) 12 on facts and in the circumstances of the case and in law erred in initiating penalty proceedings u/s. 274 r.w.s 271(l)(c) of the act, when the appellant has neither wilfully concealed particulars of income nor provided inaccurate particulars of income.*

*5. The appellant reserves the right to amend, alter, add to and/or delete all or any of the above grounds of appeal.*

3. The brief facts of the case are that the assessee filed its return of income on 19/11/2013 declaring total income at Rs.5,81,840/-. The return was processed u/s.143(1) of the Act. The case was selected for scrutiny and notices u/s.143(2) and 142(1) were issued and served upon the assessee. The assessee is an individual and having income from profit and gains from business and profession, income from capital gains and income from other sources. The assessee has claimed total expenses to the tune of Rs.54,80,210/- against the professional charges of Rs.6,00,000/- received from M/s. Indage Development Construction Pvt. Ltd. Assessee failed to submit the explanation with regard to expenses of Rs. 54,80,210/-, therefore, the expenses were declined and added to the income of the assessee. The total income was assessed to the tune of Rs.6,00,000/-.

3.1. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who confirmed the addition of AO, therefore, the assessee has filed the present appeal before us.

3.2. The issue Nos. 1,2 & 3 are in connection with the disallowance of expenses in the sum of Rs. 54,80,216/-. The assessee claimed the expenses to the tune of Rs. 54,80,210/- towards professional charges and

Rs.6 lakhs received from M/s. Indage Development Construction Pvt. Ltd. The reason for disallowance of expenses has been mentioned to the effect that the assessee claimed similar type of professional charges in the earlier year and there is no justification to allow the expenses against the same. However, we noticed that the expenses nowhere in detail discussed. Moreover, the Assessing Officer treated the receipt as salary upon which TDS was deducted u/s.194J as against Section 192, therefore, the entire expenses of Rs.54,80,210/- was declined. We nowhere find it justifiable. All these facts and expenses are liable to be examined in detail therefore, we set aside finding of the CIT(A) upon this issue and restore the issue before the Id. AO to decide the matter of controversy afresh by giving an opportunity of being heard to assessee in accordance with law. Accordingly, these issues are decided in favour of assessee against the Revenue. Accordingly, the ground Nos.1,2 & 3 are allowed.

4. The ground No.4 raised by the assessee is with regard to initiation of penalty proceedings u/s.271(1)(c) of the Act, which would be premature for adjudication at this stage, hence, the ground is dismissed as premature.

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

Order pronounced on 06/10/2021 by way of proper mentioning in the notice board.

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

**Sd/-**  
**(AMARJIT SINGH)**  
JUDICIAL MEMBER

Mumbai; Dated 06/10 /2021  
KARUNA, sr.ps

**Copy of the Order forwarded to :**

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

//True Copy//

BY ORDER,

(Asstt. Registrar)  
**ITAT, Mumbai**