

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

**BEFORE SHRI PRAMOD KUMAR (VICE PRESIDENT) AND
SHRI RAVISH SOOD (JUDICIAL MEMBER)**

**ITA No. 1978/MUM/2020
(Assessment Year: 2012-13)**

Shri. Pravin Balkishan Khanna,
11101, Quiescent Heights,
Mindspace, Link Road, Malad
(West), Mumbai – 400 064.

Dy. CIT – Range 30(2), Kautilya
Vs. Bhavan, Bandra Kurla Complex,
Bandra (East),
Mumbai – 400 051.

PAN No. AABPK5792L

(Assessee)

(Revenue)

Assessee by : Shri Ketan Vajani, A.R
Revenue by : Ms. Shreekala Pardeshi, D.R

Date of Hearing : 07/10/2021
Date of pronouncement : 11/10/2021

ORDER

PER RAVISH SOOD, J.M:

The captioned appeal filed by the assessee is directed against the order passed by the CIT(A)-41, Mumbai, which in turn arises from the order passed by the A.O u/s 143(3) of the Income-tax Act, 1961 (for short 'Act') for A.Y. 2012-13.

2. Briefly stated, the assessee who is a wholesale dealer in steel tubes/pipes had filed his return of income for A.Y 2012-13 on 28.09.2012, declaring an income of Rs. 1,41,82,226/-. Assessment was thereafter framed by the A.O vide his order passed u/s 143(3) of the Act, dated 27.02.2015 and the income of the assessee was determined at Rs. 1,53,46,870/- after, inter alia, making the following additions /disallowances :

Sr. No.	Particulars	Amount
1.	Disallowance of 20% of motor car expenses : (i). Motor car expenses : Rs. 2,87,548/- (ii). Interest on car loan : Rs. 2,48,220/-	

	(iii). Insurance on car : Rs. 1,49,815/- (iv). Depreciation on car : Rs.10,59,363/-	Rs. 3,48,989/-
2.	Difference in AIR information	Rs. 4,94,420/-

3. Aggrieved, the assessee carried the matter in appeal before the CIT(A). However, as neither the assessee nor any of his authorized representative had appeared in the course of the appellate proceedings, therefore, the CIT(A) disposed off the appeal after considering the orders of the lower authorities and the material available on record. The disallowance of motor car expenses was in all fairness scaled down by the CIT(A) to 10%. Also, finding favor with the claim of the assessee that there was an arithmetical mistake as regards the addition that was made by the A.O w.r.t the unrecorded income as per AIR information, the CIT(A) corrected the said mistake and restricted the addition to the correct amount of Rs. 1,98,171/-.

4. The assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. We have heard the Id. Authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record. We find substance in the claim of the Id. Authorized representative (for short "A.R") that though the assessee had duly participated in the appellate proceedings and had e-filed his written submissions on the web-site of the Income-tax department, however, the CIT(A) had wrongly observed that there was no compliance to the notices issued by his office. Our aforesaid observation is duly supported by the e-proceedings response acknowledgement that was issued by the Income-tax department, Page 2-3 of the Assessee's 'Paper Book' (APB).

5. On merits, we find substance in the claim of the Id. A.R that the addition made by the A.O w.r.t the unrecorded income as per AIR information suffers from certain serious infirmities. As stated by the Id. A.R, and rightly so, the addition made by the A.O towards unrecorded income at Page 4 – Sr. No. 6 (item 206) and Sr. No. 7 (item 223) are not reflected in the assessee's AIR information which has only 188 items, Page 27-35 of APB. As regards the addition of the balance amount of Rs. 1,39,171/- the Id. A.R took us through Page 9-10 of the APB and submitted that no addition was called for as regards the said respective amounts. After deliberating at length on the issue in hand, we are of the considered view that though the aforesaid claim of the assessee as regards the addition sustained by the CIT(A) qua the unrecorded income as per AIR information carries substance, but then, the same cannot be accepted on the very face of it and would require necessary factual verification. We, thus, restore the issue to the file of the A.O with a

direction to re-adjudicate the aforesaid issue after affording a reasonable opportunity of being heard to the assessee. The **Ground of appeal No. 3** is allowed for statistical purposes.

6. The Ld. A.R has also assailed before us the addition of 10% of the Motor Car expenses of Rs. 1,74,995/- sustained by the CIT(A). The A.O had, inter alia, disallowed 20% of the “Motor car expenses” of Rs. 17,44,946/- for two fold reasons, viz. (i).that the genuineness and veracity of the expenses could not be verified from the self-made vouchers; and (ii). that personal usage of the cars could not be ruled out. On appeal, the CIT(A) had restricted the aforesaid disallowance to 10% of the motor car expenses. Before us, the Id. A.R has assailed the part sustaining of the aforesaid disallowance of motor car expenses on the following grounds:

(i). that as no cash expenses were incurred w.r.t Interest on car loan, Insurance of Motor Car and Depreciation of Motor Car, therefore, no disallowance of any part of such expenses could have been made, for the reason, that the genuineness and veracity of the said expenses could not be verified from the self-made vouchers.;

(ii). that the aforesaid expenses could not be subjected to disallowance on account of alleged personal use since they are governed by specific sections which unlike Sec. 37(1) of the Act do not stipulate any wholly and exclusive usage for the purpose of business as a pre-condition for allowability of the expense as a deduction.;

(iii). that only the motor car expenses of Rs. 2,87,548/- could be subjected to an ad-hoc disallowance.

Admittedly, as the aforesaid multiple facets of the assessee's claim had not been looked into by the lower authorities, therefore, we are of the considered view that in all fairness the said issue may also be restored to the file of the A.O for fresh adjudication. The **Grounds of appeal Nos. 1 to 2.2** are allowed for statistical purposes in terms of our aforesaid observations.

7. Resultantly, the appeal of the assessee is allowed for statistical purposes in terms of our aforesaid considerations.

Order pronounced in the open court on 11.10.2021

Sd/-
(Pramod Kumar)
VICE PRESIDENT

Sd/-
(Ravish Sood)
JUDICIAL MEMBER

Mumbai;
Dated: 11.10.2021

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.

BY ORDER,
//True Copy//

(Sr. Private Secretary)
ITAT, Mumbai