

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

BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT

ITA NO. 5390/MUM/2019 : **A.Y : 2008-09**

Shakuntala Narendra Singh
3, Saroj Bhawan, Old Court Lane,
Vikhroli (W), Mumbai 400 079.
PAN : ANZPS9506K (Appellant)

Vs. Asstt. Commissioner of Income Tax,
Circle – 29(3), Mumbai.
(Respondent)

Appellant by : **Shri Subramanian**
Respondent by : **Shri Vivek Perampurna**

Date of Hearing : **28/10/2021**
Date of Pronouncement : **05/11/2021**

ORDER

This appeal by the assessee is arising out of the order of Commissioner of Income Tax (Appeals)-40, Mumbai (in short 'CIT(A)') in Appeal No. CIT(A)-40/11149/15-16 dated 26.05.2019. The assessment was framed by Asstt. Commissioner of Income Tax, Circle - 29(3), Mumbai for Assessment Year 2008-09 vide his order dated 31.08.2015 under Section 143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

2. At the outset, the learned counsel for the assessee drew my attention to the grounds raised on jurisdiction, i.e. Ground nos. 1, 2 & 3 and on merits (Ground no. 4) which read as under :-

“1. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in dismissing the appeal and that too without appreciating fully and properly, the facts of the case.

2. On the facts and in the circumstances of the case and in law, the re-opening proceeding initiated is invalid and bad in law and the learned C.I.T.(A) erred in rejecting the ground of appeal raised in this regard.

3. On the facts and in the circumstances of the case and in law, the assessment order passed u/s 143(3) r.w.s. 147 is invalid and bad in law and the learned C.I.T. (A) erred in rejecting the ground of appeal raised in this regard.

4. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in confirming the addition made by learned A.O of Rs.16,88,440/- on account of cancellation charges that too without assigning any proper reason.”

3. The learned counsel for the assessee then took me through the order of CIT(A) and read out last 8 lines of paragraph 4 of the order, which reads as under :-

“.....Even during the re-assessment proceedings, sufficient opportunity was provided to the assessee to furnish evidence to prove that expenses claimed as cancellation charges were paid as part of business expenditure. After considering the remand proceedings and as well as reply filed by the appellant, there is a strong ground to reject the additional evidence filed by the appellant u/r. 46A of the I.T. Rules and therefore, the additional grounds filed by the appellant are hereby rejected, confirming the addition made by the AO on account of cancellation charges claimed by the appellant at Rs.16,88,440/-.”

The learned counsel stated that the CIT(A) has not adjudicated the issue of re-opening and, on merits, the cancellation charges addition of Rs.16,88,440/- is without assigning any proper reason. Hence, he requested that the matter be restored back to the file of the Assessing Officer because the Assessing Officer also has not considered the facts in the proper perspective. To this

proposition, the learned Sr. DR agreed that the matter can be restored back to the file of the Assessing Officer.

4. After hearing the rival contentions and going through the facts and circumstances of the case, as noted above, I deem it fit and proper to reverse the orders of the lower authorities and remand the matter back to the file of the Assessing Officer before whom the assessee will take up the jurisdictional issue as well as the issue on merits. The Assessing Officer will decide both the issues after hearing the assessee.

5. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 5th November, 2021.

Sd/-
(MAHAVIR SINGH)
VICE PRESIDENT

Mumbai, Date : 5th November, 2021

SSL

Copy to .:

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "SMC" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar/Sr. PS
I.T.A.T, Mumbai