

**IN THE INCOME TAX APPELLATE TRIBUNAL (VIRTUAL COURT)  
"SMC" BENCH, MUMBAI**

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER**

**ITA NO. 1386/MUM/2020 (A.Y: 2009-10)**

Bombay Quarries 101, Tejas Heights Co. Op. Hsg. Society Tamil Sangam Road Sion (W), Mumbai - 400022  <b>PAN: AAIFB0999B</b>	v.	Income Tax Officer – 28(1)(2) Vashi Tower No. 6 3 <sup>rd</sup> Floor, Navi Mumbai - 400703
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Assessee by</b>	:	<b>None</b>
<b>Department by</b>	:	<b>Ms. Kranti Yadav</b>
<b>Date of Hearing</b>	:	<b>10.11.2021</b>
<b>Date of Pronouncement</b>	:	<b>10.11.2021</b>

**ORDER**

**PER C.N. PRASAD (JM)**

1. This appeal is filed by the assessee against order of Learned Commissioner of Income Tax (Appeals)-26, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 11.09.2019 for the A.Y. 2009-10.

2. Assessee has raised following grounds in its appeal: -

*"1. On the facts and in the circumstances of the case and in law the learned CIT (A) erred in dismissing the appeal purportedly facts as per the appeal memo was not helpful in adjudication. The learned*

*CIT (A) ought to have directed his office to establish the contact with the appellant as was available in the assessment records and adjudicate the Order on merits; the Order so passed is in violation of Principles of natural justice and invalid in nature.*

2. *On the facts and in the circumstances of the case and in law the learned CIT (A) ought to have declared the order as untenable in law. The AO had not issued the notice u/s 143(2) as mandated upon the return being filed in response to notice of 30.01 .2015 and the Order passed by the AO was non est and illegal.*

3. *On the facts and in the circumstances of the case and in law the learned CIT (A) erred in sustaining the Order of the AO. The learned CIT (A) was required to delete the additions as in the Order the reasons for reopening were not mentioned nor the alleged statements of M/s.Kapasi were annexed or formed a part of the assessment order which was fatal in nature rendering the Order null and void.*

4. *On the facts and in the circumstances of the case and in law the learned CIT (A) the additions made of Rs. 16,13,402/- were required to be deleted as without any basis. The additions made and sustained by the learned CIT (A) was based on inferential and based on surmises and conjectures and thus unfounded.*

5. *On the facts and in the circumstances of the case and in law the learned CIT (A) ought to have retained the status of Firm instead of the same being treated as AOP. The conditions precedent for treating the firm as AOP were not met and thus the disallowances of the interest paid and remuneration to Partners of Rs.2,46,404/- were required to be deleted.*

6. *On the facts and in the circumstances of the case and in law the learned CIT (A) was required to accept that the Order passed was beyond the scope and ambit of the provisions of the law. The order passed u/s 144 was thus untenable in law ought to have been quashed as bad in law.*

7. *On the facts and in the circumstances of the case and in law the learned CIT (A) ought to have realized that non-service of the notice could not be the basis of dismissing the appeal. The non-service of the notice was to closure of quarries in terms of the regulatory order which was construed as the appellant being not interested in prosecution of the appeal and an order passed under a mistaken impression needs to be set aside.*

8. *On the facts and in the circumstances of the case and in law the learned CIT (A) was required to direct the AO to add 12.50% of*

*the alleged bogus purchases being the practice adopted by the department at the AO and subsequent levels. The sustaining of the entire additions of alleged bogus purchases was contrary to the broad practice adopted by the department in similar cases.*

*9. All the above grounds are independent and without prejudice to each another."*

**3.** In spite of issue of notice none appeared on behalf of assessee nor any adjournment was sought. Thus, I proceed to dispose off this appeal on hearing Ld.DR on merits.

**4.** Heard Ld.DR, perused the orders of the authorities below. On a perusal of the Ld.CIT(A) order, I find that even though the Ld.CIT(A) provided opportunity on several occasions assessee could not appear before the Ld.CIT(A). Considering the totality of facts and circumstances of the case and keeping in view the additions/disallowance made by the Assessing Officer, in the interest of justice I am of the opinion that assessee should be given one more opportunity of being heard. Further, on a perusal of the grounds of appeal filed before me, it is noticed that assessee has raised legal ground that notice u/s. 143(2) of the Act has not been issued and served on the assessee and thereby rendering the assessment bad in law. This aspect of the matter has not been looked into by the Ld.CIT(A) as there was no opportunity given to the assessee nor any ground was raised before the Ld.CIT(A). Therefore, in the

interest of justice, this appeal is restored to the file of the Ld.CIT(A) for denovo adjudication in accordance with law, after providing adequate opportunity of being heard to the assessee. Assessee is directed to appear before the Ld.CIT(A) and shall cooperate with the appellate proceedings without taking unnecessary adjournments. Further, assessee is at liberty to file additional grounds before the Ld.CIT(A) who shall look into it while disposing off the appeal. Thus, this appeal is restored to the file of the Ld.CIT(A) with the above observations.

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

Order pronounced in the virtual court on 10.11.2021.

**Sd/-**  
**(C.N. PRASAD)**  
**JUDICIAL MEMBER**

Mumbai / Dated 10/11/2021  
Giridhar, 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, Mum**