

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

BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT

ITA NOS. 1453 & 1454/MUM/2020 : A.Ys : 2012-13 & 2011-12

M/s. Ashwini Trading Pvt. Ltd.
Flat No. 11, Vimla Sadan, 326,
Jawaharlal Nehru Road No. 17,
Goregaon (W), Mumbai 400 062.
PAN : AADCA9353N (Appellant)

Vs. Income Tax Officer – 9(1)(4),
Mumbai. (Respondent)

Appellant by : None
Respondent by : Shri Vaibhav Jain

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

ORDER

These two appeals by the assessee are arising out of different orders of Commissioner of Income Tax (Appeals)-16, Mumbai (in short 'CIT(A)') in Appeal Nos. CIT(A)-16/ITO-9(1)(4)/IT-10167/2018-19 and CIT(A)-16/ITO-9(1)(4)/IT-10169/2018-19 of even date 30.07.2019. The assessments were framed by Income Tax Officer – 9(1)(4), Mumbai for Assessment Years 2011-12 and 2012-13 vide his orders of even date 23.03.2016 under Section 144(1) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

2. At the outset, the learned Sr. DR relied on the orders of the lower authorities, but when it was pointed out to the learned Sr. DR that the issue raised by the assessee is as regards addition of Rs.1,10,020/- on bank

deposits/bank transactions for Assessment Year 2012-13 and Rs.5,70,835/- being 1% in respect of gross value of share transactions not accounted for and also addition of Rs.8,15,040/- on deposit in bank accounts/transactions for Assessment Year 2011-12, he agreed for the same. The learned Sr. DR was apprised that the CIT(A) has simply decided the issue without considering the case records for Assessment Year 2011-12. The relevant findings of CIT(A) in paragraph 6.1 of his order reads as under :-

“6.1 Ground No. 1 & 2

6.1.1 The appellant is agitated against addition of income of Rs.5,70,835/- on account of 1% gross value of share transaction and Rs.8,15,040/- on account of receipts shown under bank transactions. It is seen from the Ld. AO assessment order that appellant has not represented for hearing and in such scenario, the Ld. AO has completed Ex-parte assessment on the basis of material available on the records.

6.1.2 During the appellate proceeding, notices was issued at the appellant address and fixed the date of hearing on various dates, but again in the appeal, except statement of facts, no response has been received. Thus, this is the purely mistake from the appellant side that they have not taken legal things seriously.

6.1.3 I have considered the submissions of the appellant and perused the materials available on record. It is seen that Ld. AO made addition on the basis of bank receipts and income appearing in the Form 26AS. Also, appellant has failed to discharge the basic ingredients of assessment proceedings by not providing any evidences or supporting documents. Further, in absence of relevant documents and supporting, as per sec. 144 of the I.T. Act, Ld. AO has power to pass the order according to the material place on record. Considering the facts, I tend to agree with the Ld. AO contention. Therefore, the appeal of the assessee on this ground is dismissed.”

3. None is present on behalf of the assessee before me. After hearing the learned Sr. DR and noticing the fact that the orders of CIT(A) are non-speaking order, I remand these appeals to the file of CIT(A) for afresh adjudication as the matters cannot be decided on the basis of non-speaking order of CIT(A). Hence, both the orders of CIT(A) are set aside and the matters remanded back to the file of CIT(A) for afresh adjudication.

4. In the result, both the appeals of assessee are 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