

IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” Bench, Mumbai
Before Shri Shamim Yahya, Accountant Member

I.T.A. No. 1772/Mum/2020
(Assessment Year 2011-12)

Mukta Gas Services Pvt.Ltd. C/o. A/1207, Ratnaakar Nine Square, Opp. Keshavbaugh Party Plot, Satellite Ahemdabad-380015	Vs.	ITO-12(3)(4) Room No.147A, 1 st Floor Aykar Bhawan Mumbai-400 020
PAN : AADCM8148D (Appellant)		(Respondent)

Assessee by	Shri Hardik Vora
Department by	Ashish Pophare
Date of Hearing	18.11.2021
Date of Pronouncement	19 .01.2022

ORDER

Per Shri Shamim Yahya (AM) :-

This appeal by the assessee is directed against the order of learned Commissioner of Income Tax (Appeals)-20, dated 19.02.2019 and pertains to assessment year 2011-12.

2. Grounds of appeal read as under:-

1. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income-tax (Appeals) has erred in passing exparte order without giving enough opportunities to represent the case without discussing on merits of the matter.
2. On the facts and circumstances of the case as well as law on the subject, the learned Assessing Officer has erred in reopening the assessment u/s 147 of the Act.
3. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income-tax (Appeals) has erred in confirming addition of Rs.28,47,534/-on account of unexplained income in respect of contract received and interest receipts.

4. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income-tax (Appeals) has erred in confirming addition of entire turnover as unaccounted income
3. Brief facts of the case are that in this case AO passed order under section 144 r.w.s. 147 making addition of Rs. 28,47,534/- being “disallowance unexplained income”.
4. Upon assessee's appeal, Ld.CIT(A) noted that despite notice nobody had appeared before him. He took adverse inference in this regard. Thereafter, he passed very contradictory order. In part of his order, he held that assessee's explanation is cogent and then, he held that addition is sustained. The order of Ld.CIT(A) in this regard may be referred as under:-

I find from the assessment order that the AO has given ample opportunities to submit the details in respect of contract receipts and interest receipt amounting to Rs.28,47,534/-. However, the appellant did not appear before the AO. Nor did it make any written submission. Also, in the course of the appellate proceedings, the notices of hearings were issued on 3 occasions. However, appellant neither appeared on the dates of hearing nor made any submissions. In omitting to attend the hearings, the appellant has failed to rebut the findings of the AO.

In the assessment order, the AO has mentioned that the appellant has received a sum of Rs.28,47,534/- from 4 parties. There is no finding by the AO that the money was credited in appellant's books of accounts. Further, the information received itself explains the source and nature of the money received.

Therefore, the money cannot be treated as unexplained cash credit. In my view, the money is to be treated as unaccounted turnover of the appellant since the appellant has failed to establish that those receipts were recorded in its books of accounts. Accordingly, I hold that the sum of Rs.28,47,534/- represents income assessable under the head 'Profits and gains of business or profession'. Accordingly, I direct the AO to assess the sum under the head 'Profits and gains of business or profession'.

Further, the appellant objected to the initiation of penalty u/s.271(1)(c) of the Act. This ground of appeal is premature in nature. Hence, the same has not been adjudicated.

5. Against the above order, assessee is in appeal before ITAT.

6. I have heard both the parties and perused the records. I find that in the order passed by the Ld.CIT(A), partly he accepts that the account is not credited in assessee's books. Then, he holds that the amount received is assessee's turnover and the entire amount is to be added. How can the entire turnover be profit is not explained by Ld.CIT(A), when the amount is not also credited in assessee's books. Such an order is not legally sustainable. However, the Ld. Counsel of the assessee has submitted that there were genuine problems due to which the assessee could not properly substantiate/represent the case before the Ld.CIT(A). He submitted that an opportunity may be granted to the assessee before Ld.CIT(A) to properly canvas the appeal.

7. Upon careful consideration on the facts and circumstances of the case, I deem it appropriate to remit the issue to the file of Ld.CIT(A). The Ld.CIT(A) shall pass appropriate speaking order as per law after giving the assessee proper opportunity of being heard.

8. In the result, this appeal by the assessee stands allowed for statistical purpose.

Pronounced in the open court on 19.01.2022

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 19.01.2022

Thirumalesh, Sr.PS

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.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai