

IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH,
MUMBAI
BEFORE SHRI OM PRAKASH KANT, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No.542/Mum/2021
(निर्धारण वर्ष / Assessment Year: 2015-16)

Sunita Rakesh Jain 1701, Brighton Towers, Hari Om Nagar, Near Eastern Express Highway Mulund East, Mumbai-400081.	बनाम/ Vs.	ITO-29(3)(4) 308, 3 rd Floor, C-10, Pratyakshakar Bhawan, Bandra Kurla Complex, Bandra (E), Mumbai- 400051.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AGQPJ7159M		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	Shri Sanjiv Brahme	
Revenue by:	Shri Bhomika Patel	

सुनवाई की तारीख / Date of Hearing: 29/11/2021
घोषणा की तारीख /Date of Pronouncement: 20/12/2021

आदेश / ORDER

PER AMARJIT SINGH, JM:

The assessee has filed the present appeal against the order dated 13.12.2019 passed by the Commissioner of Income Tax (Appeals)-40, Mumbai (hereinafter referred to as the “CIT(A)”) relevant to the A.Y.2015-16.

2. The assessee has raised the following grounds: -

“1. The CIT(A) failed to service a proper notice to the Appellant and passed the ex-parte order.



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2. *The CIT(A) failed to appreciate that the AO did not carry out any independent enquiry himself for the reconciliation of sales amount therefore, the addition sustained by CIT(A) is unjustified and is liable to be deleted.*

3. *The CIT(A) failed to appreciate that the AO had not provided to the Appellant any material on which he placed reliance in making the impugned addition as also opportunity of cross examination thereby violating the principles of natural justice. Therefore, the addition is liable to be deleted.*

4. *The CIT(A) erred in confirming the addition of increase in sales of Rs.4,16,073/- without verification of the facts.*

Interest levied u/s 234A,234B & 234C of the Act

5. *The CIT(A) erred in confirming the levy of interest under sections 234A, 234B & 234C of the Act*

Initiation of penalty proceedings

6. *The CIT(A)erred in confirming the penalty proceedings initiated by AO u/s 271(1)(c) of the Act*

The appellant craves leaves to add, amend, alter or delete any of the above grounds of appeal.”

3. The brief facts of the case are that the assessee filed her return of income on 28.03.2016 declaring total income to the tune of Rs.9,96,990/-. The case was selected for scrutiny. Thereafter, notices u/s 143(2) & 142(1) of the Act were issued and served upon the assessee. The assessee is engaged in the business of Construction Contracts. During the course of



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assessment proceedings, the assessee has shown the turnover of Rs.56,69,505/- for A.Y.2014-15 in Service Tax Return. The assessee's gross receipts as per 26AS for F.Y.2014-15 was of Rs.53,96,630/-. The assessee has shown the turnover of Rs.52,53,432/- in Income Tax Return. Accordingly, the assessee could not explain the reasons as to why the difference between the gross receipts as per service tax return or 26AS was not offered for taxation. Thereafter, the undisclosed business income of Rs.4,16,073/- was added to the income of the assessee. The penalty proceeding was initiated u/s 271(1)(c) for concealment of income. The total income of the assessee was assessed to the tune of Rs.14,13,060/-. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who dismissed the appeal of the assessee, therefore, the assessee has filed the present appeal before us.

4. We have heard the arguments advanced by the Ld. Representative of the parties and perused the record. The Ld. Representative of the assessee has argued that the CIT(A) has decided the matter of controversy in absence of the assessee and without giving an opportunity of being heard to the assessee in accordance with law, therefore, the finding of the CIT(A) is not justifiable, hence, is liable to be set aside in the interest of justice. However, the Ld. Representative of the Department has refuted the said contention. On appraisal of the order of the CIT(A) dated 13.12.2019 passed by the CIT(A), we find that the CIT(A) has decided the matter of controversy in absence of the assessee/Representative of the assessee without giving an opportunity of being heard to the assessee in the accordance with law. A proper and reasonable opportunity is required to be



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given to the assessee before deciding the matter of controversy in accordance with law.

5. For this proposition we placed reliance upon the following case laws.

(1) CIT Vs. Premkumar Arjundas Luthra (HUF) (2017) 154 DTR (Bom) 302

(2) CIT Vs. S Chenniappa Mudaliar (1969) 74 ITR 1 (SC)

6. Accordingly in the interest of justice, we remit the issue raised in the appeal to the file of the Ld. CIT(A). Ld. CIT(A) is directed to consider the issue afresh and pass an order on the merits of the case after giving after giving a proper opportunity of being heard to the assessee in accordance with law. Therefore, in the said circumstances, we are of the view that the order of the CIT(A) is not liable to be sustainable in the eyes of law, therefore, we set aside the finding of the CIT(A) on all the issues and restore the matter before the CIT(A) to decide the matter afresh by giving an opportunity of being heard to the assessee in accordance with law.

7. In the result, the appeal filed by the assessee is hereby allowed for statistical purposes.

Order pronounced in the open court on 20/12/2021

Sd/-

(OM PRAKASH KANT)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 20/12/2021

Vijay Pal Singh (Sr. PS)

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER



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आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

**उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**