

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "G" MUMBAI**

**BEFORE SHRI PROMOD KUMAR (VICE PRESIDENT) AND  
MS. SUCHITRA KAMBLE (JUDICIAL MEMBER)**

**ITA No. 1365/MUM/2020  
Assessment Year: 2010-11**

Zanul Abiden Vahora,  
Flat No. 7, Plot No. 156, Chandrakiran  
Society, Behind Tolani College, Shere  
Punjab Society, Andheri (East),  
Mumbai-400093.

**PAN No. AHTPV 0978 L**

**Appellant**

ITO, WD-25(1)(5),  
Room No. 611, C-12, Pratyaksh  
Kar Bhavan, Bandra Kurla  
Complex, Bandra (East),  
Mumbai-400051.

**Respondent**

Assessee by : Mr. Prakash Jhunjunwala, AR  
Revenue by : Mr. Hoshang B. Irani, DR

Date of Hearing : 11/01/2022  
Date of pronouncement : 17/01/2022

**ORDER**

**PER MS. SUCHITRA KAMBLE, JM**

The present appeal is filed by the assessee against the order of the Commissioner of Income Tax (Appeals)-37, Mumbai [in short 'CIT(A)'] for the assessment year 2010-11 dated 17.04.2017 and arises out of assessment completed u/s 143(3) r.w.s 147 of the Income Tax Act, 1961 (in short the Act).

2. The following grounds raised by the assessee are as under :

1. *On facts and circumstances of the case and in law, Ld. CIT(A) erred in passing the appeal order ex-parte on ignoring the fact that appellant could not attend the appellate and assessment*

- proceedings under the bonafide reasons and compelling circumstances beyond control of the appellant;*
2. *On facts and circumstances of the case and in Law, Ld. CIT(A) erred in confirming the validity of notice u/s 148 issued in absence of fresh tangible material, without independent application of mind on borrowed satisfaction and without having valid reason to believe of escapement of income;*
  3. *On facts and circumstances of the case and in Law, Ld. CIT(A) erred in confirming the rejection of appellant's books of accounts us 145(3) of the Act;*
  4. *On facts and circumstances of the case and in Law, Ld. CIT(A) erred in confirming the addition w/ 68 of Cash deposits of Rs.24,52,883/- and cheque/ RTGS deposits made in the bank accounts of Rs.25,90,000/- totalling to Rs.50,42,883/-;*
  5. *Without prejudice, the concept of real income ought to have been adopted and addition ought to have sustained to extent of the actual profits @ 5% embedded in disputed receipts;*
  6. *Without prejudice, the addition of cash credits utmost be restricted to the peak of cash and cheque credits on following the telescoping method.*

3. During the year, the assessee was engaged in the business of sale and supply of belts and wallets. The assessee filed return of income on 31.03.2012 declaring total income of ₹2,49,820/-. The Assessing Officer made addition of ₹50,42,883/- in respect of unexplained cash credits as well as ₹9,783/- as bank interest. The assessment was completed on 20.03.2015.

4. Being aggrieved by assessment order, the assessee filed appeal before the Ld. CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld. AR submitted that the Ld. CIT(A) has passed *ex-parte* order and has not followed principles of natural justice, therefore, the matter may be remanded back to the file of the Ld. CIT(A) for proper adjudication of the grounds on merits.

6. The DR relied upon the assessment order and the order of the Ld. CIT(A).

7. We have heard both the parties and perused all relevant materials available on record. It is pertinent to note that since the assessee was not residing in India for the particular period no representation was done by the assessee before the Ld. CIT(A). Therefore, it will be appropriate to remand back the entire issue to the file of the Ld. CIT(A) for proper adjudication. Needless to say the assessee be given opportunity of hearing by following principles of natural justice.

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

**Order pronounced in the open Court on 17/01/2022.**

Sd/-  
**(PRAMOD KUMAR)**  
**VICE PRESIDENT**

Sd/-  
**(SUCHITRA KAMBLE)**  
**JUDICIAL MEMBER**

Mumbai;

Dated: 17/01/2022

Rahul Sharma, Sr. P.S.

**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,

(Sr. Private Secretary)  
**ITAT, Mumbai**