

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

BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER AND
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No.112/Mum./2021
(Assessment Year : 2009-10)

Sharmila Arun Patil
C/o Adv. N.A. Kulkarni
Wadal Building, 1st Floor
Near DNS Bank, Manpada Road
Dombivili (E), Dombivali 421 201
PAN – AEYPP9207J

..... Appellant

v/s

Income Tax Officer
Ward-1(4), Kalyan

.....Respondent

Assessee by : Shri N.A. Kulkarni
Revenue by : Ms. Smita Nair, Sr. AR

Date of Hearing – 23/06/2022

Date of Order – 22/08/2022

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 28/02/2020, passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by learned Commissioner of Income Tax (Appeals)-2, Mumbai, for the assessment year 2009-10.

2. The present appeal filed before us is delayed by 248 days. In the present case, the impugned order dated 28/02/2020, was received by the assessee on 03/03/2020. Thus, as per the provisions of section 253(3) of

the Act, the assessee was required to file appeal within 60 days from the date of receipt of order. However, the assessee filed appeal, for the year under consideration, on 09/02/2021. We find that the Hon'ble Supreme Court, vide order dated 10/01/2022, passed in M.A. no.21 of 2022, in M.A. no.665 of 2021, in Suo-Motu Writ Petition (Civil) no.3 of 2020, directed that the period from 15/03/2020 till 28/02/2022, shall stand excluded for the purpose of limitation as may be prescribed under any general or special laws in respect of all judicial and quasi judicial proceedings. As the due date for filing present appeal was falling within the aforesaid time-period, in view of the order passed by the Hon'ble Supreme Court, there is no delay in filing the present appeal and we proceed to decide the appeal on merits.

3. In this appeal, the assessee has raised following grounds:

"The learned CIT (A) 2 Thane has erred in:

1) Not granting the proper opportunity being heard before dismissing the appeal in merit.

2) She has also erred in not asking the expl. from the appellant on the remand report.

3) While confirming the orders of AO the papers submitted by the AO. Along with the remand report have not properly considered.

4) While confirming orders of AO she has construed the facts as the assessee is being following mercantile system though assessee follows cash system. Since the AO provide the copy of return along with the remand report not being followed. Hence her action to sustain the order of AO found before your honor unwarranted but considering our submissions on remand report the said order required to be set aside and considered at your stage as she has decided the case on merit findings."

4. The brief facts of the case, as emanating from the record, are: The assessee is an individual and filed her return of income, for the year under consideration, on 09/10/2009, declaring total income of Rs. 5,44,190. The return of income was initially processed under section 143(1) of the Act. Subsequently, the case was reopened under section 147 of the Act on the basis that the assessee has not disclosed business receipts of Rs. 11,72,570, and not claimed TDS of Rs. 1,29,398, in her return of income, for the year under consideration. In absence of any reply from the assessee, in response to notices issued during the assessment proceedings, the Assessing Officer proceeded to complete the assessment under section 144 read with section 147 of the Act. During the assessment proceedings, upon verification of 26AS, it was observed that amount of Rs. 11,18,675, and Rs. 53,895, have been credited to the account of the assessee under section 194-I and 194C of the Act. As the assessee has not disclosed the aforesaid receipts as income and in the absence of any response / explanation from the assessee, the Assessing Officer vide order dated 20/03/2015, considered the total receipts of Rs.11,72,570, as undisclosed income of the assessee and added the same to the total income of the assessee.

5. In appeal before the learned CIT(A), assessee filed written submission stating that the receipts as mentioned by the Assessing Officer has already been covered in the receipts of hiring charges disclosed by the assessee and therefore same cannot be considered as suppressed receipts or unaccounted receipts. The assessee further submitted that the

difference is on account of the fact that the said receipts were shown as the hiring charges by the assessee, while the customer has shown those receipts as rent receipts and deducted TDS under section 194-I of the Act. As the assessee was not aware about the information in 26AS, therefore, the credit of TDS was not claimed in the return of income. The assessee further submitted that the hiring charges paid to the assessee is on account of its business activity of providing cranes on hire basis as well as dumpers on transportation basis. The aforesaid submission of the assessee was forwarded to the Assessing Officer for verification and submission of remand report. In compliance, the Assessing Officer forwarded the report to the learned CIT(A). As mentioned in the impugned order, copy of the remand report was also forwarded to the assessee and comments thereon were sought. The learned CIT(A), vide impugned order, dismissed the appeal filed by the assessee, by observing as under:

"10.1 On perusal of the submissions of the appellant made during the course of remand proceedings it was observed that the computation or income submitted was different from that submitted during the course appellate proceedings. It was further observed that the party-wise receipts as reflected in Form 26AS were not exactly correlated with the receipts shown return of income and its annexure. The appellant also failed to submit copies of bank statements to verify the transaction reflected in Form 26AS. Further, the appellant failed to submit any reply/rejoinder in terms of the remand report submitted by the AO. Thus, the appellant squarely failed to discharge the onus cast upon her for substantiating the receipts reflected in Form 26AS. Considering the facts in entirety and in view of the AO's submission in remand report, the addition of Rs.11,72,570/- is hereby sustained and this ground of appeal is dismissed."

Being aggrieved, assessee is in appeal before us.

6. During the course of hearing, learned Authorised Representative (*learned AR*) wish to file bank statements of the assessee by way of

application seeking admission of additional evidence. The learned AR further submitted that assessee was not granted proper opportunity to rebut Assessing Officer's observations in the remand report filed before the learned CIT(A).

7. On the other hand, learned Departmental Representative vehemently relied upon the orders passed by the lower authorities.

8. We have considered the rival submissions and perused the material available on record. As per the assessee, the documents now sought to be filed by way of additional evidence were not sought by the lower authorities and only in the remand proceedings, the Assessing Officer required the bank statements. It is submission of the assessee that before the compliance could have been made, the learned CIT(A) dismissed the appeal filed by the assessee. In view of the aforesaid submissions, additional evidences filed by the assessee are admitted. As is evident from the record, assessee filed detailed submission before the learned CIT(A), in respect of same, remand report from the Assessing Officer was also sought. However, as per assessee, appropriate reply could not be filed by the assessee against the aforesaid remand report in time due to change in jurisdiction of the learned CIT(A) from Pune to Thane. In view of the above, we deem it appropriate to remand this issue to the file of learned CIT(A) for *de novo* adjudication after granting proper opportunity to the assessee of hearing and to file reply against the remand report of the Assessing Officer. The learned CIT(A) is also directed to consider the

additional evidence, now filed by the assessee before us, while adjudicating assessee's appeal afresh. Accordingly, all the grounds raised by the assessee are allowed for statistical purpose.

9. In the result, appeal by the assessee is allowed for statistical purpose.

Order pronounced in the open court on 22/08/2022

Sd/-
OM PRAKASH KANT
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 22/08/2022

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai