

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER
ITA No. 5275/Mum/2019 (A.Y. 2010-11)

Iftexhar Mukhtar Siddiqui,
Room No. 60, Prem Nagar,
Behind Lucky Hotel, Sion Agra Road,
Sion, Mumbai-400022

PAN: BGSPS0603N

..... Appellant

Vs.

ITO-26(1)(5),
C-1 Building, Kautilya Bhavan,
Bandra Kurla Complex,
Mumbai-400051.

..... Respondent

Appellant by	:	None
Respondent by	:	Ms. Kavita Kaushik
Date of hearing	:	07/06/2022
Date of pronouncement	:	05/09/2022

ORDER

PER GAGAN GOYAL, A.M:

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-38, Mumbai [hereinafter referred to as ('Ld. CIT(A')]] dated 28.03.2019 for the Assessment Year (AY) 2010-11. The assessee has raised the following grounds of appeal:

Sr.No.	Grounds of appeal	Tax effect relating to each Ground of appeal.
1.	<p>On the facts and circumstances of the case and in law the Ld CIT(A) erred in confirming the initiation of the reassessment proceeding under section 147.</p> <p>On the facts and circumstances of the case and in law the Ld CIT(A) failed to consider that reassessment proceeding cannot be initiated.</p> <p>a) No reassessment can be made just to make an enquiry or verification.</p> <p>b) Reassessment proceeding cannot be initiate merely on the information received from investigation wing.</p> <p>c) Reassessment proceeding cannot be initiated when the LD. CIT(A) have reason to suspect and not reason to believe.</p>	
2.	<p>On the facts and circumstances of case and law the Ld CIT(A) erred in confirming the assessment order under section 144 r ws 147 of income tax Act which is passed against the principal of natural justice.</p>	
3.	<p>On the facts and circumstances of the case the Ld CIT(A) erred in confirming the addition of genuine cash deposits Rs. 17,62,700/- as unexplained money and added the same to the total income of the assessee in view of section 69A of the Income Tax Act, 1961.</p>	Rs.5,28,810
4.	<p>The Ld. CIT (A) erred in confirming the charging of interest under section 234A, 234B 234C and 234D of the Income Tax Act 1961.</p>	Rs.3,13,750
5.	<p>On the facts and circumstances of the case the Ld CIT(A) erred in confirming the initiation of penalty under section 271F without considering the applicability of provisions of section 44AD of the Income Tax Act, 1961.</p>	
6.	<p>The Ld. CIT(A) erred in confirming the initiation of the penalty proceeding under section 274</p>	

	r.w.s. 271(1)(c) of the Income Tax Act 1961.	
	Total tax effect (see note below)	No

2. Brief facts of the case are that the assessee had not filed any return of income for the A.Y. 2010-11. It was seen from I-Taxnet, that the assessee is a non filer in NMS cycle-1 under the category P-4. On perusal of ITS available with the department, it is found that during the relevant F.Y. the assessee has deposited cash of Rs 17,62,700/- with ICICI Bank Ltd. Hence considering the material on record A.O issued notice u/s 148 and 142(1) to file the return. In response to both the notices neither return was filed nor was any response to notice u/s 142(1) made. Once again this process of issuance of notice was done, but in vain.

3. Accordingly assessment was done u/s 144 r.w.s.147 and the entire amount of deposit i.e. Rs 17,62,700/- was assessed as total income of the assessee and penalty u/s 271F for non filing of return and 271(1)(c) also initiated for concealment of particulars of income.

4. Against this order of A.O assessee preferred an appeal before the Ld. CIT(A)-38, Mumbai. Before the Ld. CIT (A), the ld. counsel of the assessee submitted that the assessee is a proprietor of M/s I.S. Printers and is engaged in the business of printing of all kinds of glass bottle, cold drink bottle and perfumes bottles etc. The assessee had not filed any Income Tax return as the income of the assessee was below taxable limit. He further submitted that assessee had never received any notice during the assessment proceedings from the department. Assessee came to know about assessment proceedings only when his account was frozen.

5. Assessee counsel further argued on two fronts:

- a) *A.O should apply peak credit theory instead of adding back the whole amount of Rs 17,62,700/-.*
- b) *Applicability of sec 44AD of the Act. Means gross figure of the assessee should be taxed on presumptive basis @ 8%.*

6. With these arguments of the counsel Ld. CIT (A) was not inclined to give any relief to the assessee for the reason that assessment was framed u/s 144 and assessee had not filed any return of income. Further to substantiate his arguments assessee hadn't filed any application under rule 46A(which is mandatory on the part of the assessee as a procedural requirement).The Ld. CIT (A) dismissed the appeal on this technical ground instead of taking any stand on merits of the case.

7. Being aggrieved with the order of Ld. CIT (A) assessee came forward to file this appeal before us. We have gone through the orders of authorities below and further pursue the argument of the counsel taken before the Ld. CIT (A)

8. We also observed that since filing of appeal before us case of the assessee was fixed for hearing for 12 times but none appeared. It shows casual and negligent approach at the end of assessee.

9. But to be just and fair with the matter before us and considering the argument of the counsel before the Ld. CIT (A), we deem it fit to restore the matter back to the file of A.O with a specific direction that this time A.O has to ensure the proper delivery of the notices to the assessee and assessee- is directed to comply with all the notices without default. Assessee is also directed to cooperate in the proceedings before the A.O and file requisite replies with proper explanation and evidences.

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

Order pronounced in the open court on 5th day of September, 2022.

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER

Mumbai, दिनांक / Dated: 05/09/2022

SK, Sr.PS

Copy of the Order forwarded to:

1. अपीलार्थी / The Appellant ,
2. प्रतिवादी / The Respondent.
3. आयकर आयुक्त (अ) / The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय. अपी. अधि. , मुंबई / DR, ITAT, Mumbai
6. गार्ड फाइल / Guard file.

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BY ORDER,

(Dy. /Asstt. Registrar)
ITAT, Mumbai