

IN THE INCOME TAX APPELLATE TRIBUNAL
“H” BENCH, MUMBAI
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER

ITA No. 1840/Mum/2022

(A.Y: 2013-14)

Harvinder Oberai 11, Tulsi Mahal, Opp Teresa School, 26 th Road, Bandra, Mumbai-400050	Vs.	ITO-23(1)(5), Room No. 114, Matru Mandir, Tardeo , Mumbai -400007.
PAN/GIR No. AASOP2065R		
Appellant	..	Respondent

Appellant by :	Ms.Neelam C Jadav.AR
Respondent by :	Mr.Tejinder Pal Singh.DR

Date of Hearing	08.09.2022
Date of Pronouncement	12.09.2022

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

The assessee has filed the appeal against the order of the CIT(A)- National Faceless Appeal Centre (NFAC), Delhi passed u/s 144 and 250 of the Act. The assessee has raised the following grounds of appeal:

1. The Appellant prays that the Learned Commissioner of Income Tax Appeal be directed to consider all the documents submitted by the Appellant on records before passing the Appeal Order, which he has failed to do and accordingly resulted in upholding the High pitch assessment of the Assessee done by the Learned Income

Tax Officer and these documents should be considered before any decision.

2. The Commissioner of Income Tax -Appeals should accord an opportunity to the Appellant to make submissions with respect to the documents submitted and also submit all other documents as the Appellant may fit to justify the ground of Appeal,

3. The Appellant prays that the Appeal Order of Commissioner of Income Tax should be set aside and an opportunity be accorded to the Appellant afresh to submit and explain the facts.

4. The Appellant prays that the Learned Commissioner of Income Tax -Appeals has not exercised the wide array of powers available to him under the provisions of Income Tax Act to ascertain the facts before confirming the additions in hands of Appellant and the adhoc additions should be deleted.

5. The gross receipt of Appellant's wife is also treated as Income of Appellant, the same should be deleted as she is assessed to tax separately and has a separate PAN. She has also filed tax returns independently. The Adhoc addition speaks of non application of mind by the learned Assessing Officer and should be deleted.

6. The learned Commissioner of Income Tax -Appeals has confirmed the gross receipt in the Bank account in treating the same as Income which is grossly erroneous and this Adhoc and arbitrary additions of Rs 8,42,13,678 should be deleted.

7. The appellant craves leave to add, amend, alter, delete and / or modify any of the aforesaid grounds of appeal on or before the date of hearing.

2. The Brief facts of the case are that, the Assessing Officer (A.O) has received information from AIMS that the assessee has made cash deposits of Rs. 45,38,700/- in the bank accounts in the F.Y 2012-13 and the assessee has not filed the return of income for the A.Y 2013-14. The A.O has issued notice u/s 142(1) of the Act and there was no compliance to the notice. Therefore the A.O. has reason to believe that the income has escaped assessment and has issued notice u/s 148 of the Act and served by way of affixture. Further the A.O. has issued the various letters and the inspector has also visited the place but there was no compliance by the assessee. Due to non co-operation of the assessee, the AO has observed that the assessee is not interested in submitting the information and applied the provisions of Sec.144 of the Act and made Best judgment assessment and issued notice u/s 133(6) of the Act on the Branch Manager, Bank of India, Mumbai, where the assessee is a proprietor of two concerns and were total

deposits made in the F.Y.2012-13 aggregated to Rs.8,42,13,678/-.The A.O. is of the opinion that despite the deposits in the bank accounts, the assessee has not filed the return of income for the A.Y. 2013-14 nor explained the credits in spite of providing various opportunities and made addition of Rs.8,42,13,678/- as unexplained investments U/sec69 of the Act and assessed the total income of Rs.8,42,13,678/- and passed the order u/s 144 r.w.s 147 of the Act dated 01.12.2016.

3. Aggrieved by the order the assessee has filed an appeal before the CIT(A),whereas the CIT(A) has considered the grounds of appeal, statement of facts and findings of the AO and has issued notices of hearing and since there was no compliance by the assessee to notices. Therefore the CIT(A) considering the information on record has confirmed the action of the A.O and dismissed the appeal. Aggrieved by the order of the CIT(A), the assessee has filed an appeal before the Hon'ble Tribunal.

4. At the time of hearing, the Ld. AR submitted that the CIT(A) has erred in confirming the action of the

Assessing officer. The assessee has a good case on merits and shall substantiate with the material evidence and prayed for an opportunity to explain before the lower authorities. Contra, the Ld. DR supported the order of the CIT(A).

5. We heard the rival submissions and perused the material on record. Prima-facie the CIT(A) has passed the order considering the fact that there is no appearance in spite of providing adequate opportunity of hearing and the notices were issued. Therefore, the CIT(A) was of the opinion that the assessee is not interested in prosecuting the appeal and dismissed the appeal ex-parte confirming the action of the assessing officer. We find the Ld.CIT(A) has issued the notices of hearing referred at page 2 of the order, but there was no response and thus the Ld.CIT(A) came to a conclusion that the assessee is not interested and decided the appeal based on the information available on record. We find that the assessee has raised grounds of appeal challenging the additions of the assessing officer vide order u/sec144 r.w.s147 of the Act and there could be various reasons for non

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appearance which cannot be overruled. We considering the principles of natural justice shall provide one more opportunity of hearing to the assessee to substantiate the case before the Assessing Officer along with evidences and information. Accordingly, we set aside the order of the CIT(A) and remit the entire disputed issues to the file of the Assessing Officer to adjudicate afresh on merits and the assessee should be provided adequate opportunity of hearing and shall cooperate in submitting the information and allow the grounds of appeal of the assessee for statistical purposes.

6. In the result, the appeal filed by the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on 12.09.2022

Sd/-

(AMARJIT SINGH)
ACCOUNTANT MEMBER

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 12.09.2022

KRK, PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)
4. Concerned CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

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आदेशानुसार/ BY ORDER,

(Asst. Registrar)
ITAT, Mumbai