

**IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, MUMBAI**

**BEFORE SHRI AMIT SHUKLA, HON'BLE JUDICIAL MEMBER AND
SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER**

ITA NO. 2159/MUM/2022 (A.Y: 2009-10)

Anil Monshi Shah 103, Sukh Castle, Bhandarkar Road Matunga (E), Mumbai – 4000196 PAN: AAACPS9726P	v.	ACIT – 20(1) Room No. 113, Piramal Chambers Lalbaug, Mumbai – 400 012
(Appellant)		(Respondent)

Assessee by	:	None
Department by	:	Shri Manoj Sinha
Date of Hearing	:	28.09.2022
Date of Pronouncement	:	30.09.2022

ORDER

PER S. RIFAUR RAHMAN (AM)

1. This appeal is filed by the assessee against order of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [hereinafter in short "Ld.CIT(A)"] dated 27.06.2022 for the A.Y.2009-10.

2. Assessee has raised following grounds in its appeal:

"ON NATURAL JUSTICE:

1.1 *In the facts and circumstances of the case and in law, the Learned Commissioner of Income Tax (Appeals), NFAC ["the CIT(A)"] erred in confirming the assessment order u/s 143(3) r.w.s. 147 of the Income Tax Act, 1961 and passing the appellate order in gross violation of the principles of Natural Justice and basing his order on irrelevant and extraneous considerations while ignoring the relevant material considerations and evidences.*

"ON JURISDICTION TO FRAME RE-ASSESSMENT:

2.1 *In the facts and circumstances of the case and in law, the Ld. CIT(A) erred in affirming the re-assessment order passed by the Learned Assessing Officer ["the AO"] u/s 143(3) r.w.s. 147 of the Income Tax Act, 1961 ["the Act"] without appreciating the fact that the said re-assessment proceeding is bad in law and void for want of jurisdiction since the necessary pre-conditions for initiation as well as completion of a re-assessment as contemplated u/s 147/ 148 of the Act are not fulfilled in the present case.*

2.2 *In view of the above the re-assessment framed by the AO deserves to be quashed.*

"ON MERITS:

3.1 *In the facts and circumstances of the case the Ld. CIT(A) erred in confirming the action of the Ld. AO in making ad-hoc disallowance from purchases invoking section 69C of the Act without appreciating the fact that no disallowance could have been made invoking the said section.*

3.2. *In the facts and circumstances of the case and in law, the Ld. CIT(A) erred in confirming the action of the Ld. AO in disallowing an amount of Rs.2,25,779/- being 12.5% of the purchases of Rs.18,06,234/- made by the Appellant from M/s Nazar Impex without appreciating the fact that the purchases were genuine and evidenced by a plethora of documents and evidences which has not been considered by the Ld. AO as well as the Ld. CIT(A) before confirming the said disallowance.*

3.3 Without prejudice to the above, in the facts and circumstances of the case and in law, the Ld. AO erred in not applying a fair and reasonable Gross Profit Ratio of 1 to 3% to the said purchases since the Appellant has primarily done trading in diamonds wherein the margin is miniscule, and the business is purely volume based.

ON LEVY OF INTEREST:

4.1 In the facts and circumstances of the case and in law the Ld. AO erred in levying interest u/s 234A, 234B and 234C of the Act on the Appellant.

The Appellant craves leave to add, amend, alter, delete or modify all or any the above grounds at the time of hearing."

3. In spite of issue of notice none appeared on behalf of the assessee nor any adjournment was sought. Therefore, we proceed to dispose of this appeal on hearing the Ld. DR on merits.

4. Considered the submissions of Ld.DR and material placed on record. On a perusal of the Ld.CIT(A) order, we find that even though the Ld.CIT(A) provided opportunity on multiple occasions i.e., on 03.12.2021, 09.05.2021 and 15.06.2022 and assessee could not appear before the Ld.CIT(A). Considering the totality of facts and circumstances of the case and keeping in view the additions/disallowance made by the Assessing Officer, in the interest of justice we are of the opinion that assessee should be given one more opportunity of being heard. Thus, this appeal is restored to the file of the Ld.CIT(A) for denovo adjudication in accordance with law. Assessee is directed to appear before the Ld.CIT(A) and shall

cooperate with the appellate proceedings without taking unnecessary adjournments. Thus, this appeal is restored to the file of the Ld.CIT(A) accordingly.

5. In the result, appeal of the assessee allowed for statistical purpose.

Order pronounced in the open court on 30th September, 2022.

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER
Mumbai / Dated 30.09.2022
Giridhar, Sr.PS

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

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

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum