

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH “SMC”, MUMBAI**

BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER

**ITA No.2002/M/2020
Assessment Year: 2005-06**

M/s. Hope India Foundation, Shop No.9, Sai Satna CHS, Plot No.19, Sector-25, Nerul (E), Navi Mumbai Mumbai – 410 706 PAN: AAATH2677L	Vs.	Asst. Commissioner of Income Tax, Panvel Circle, Panvel, Dist Raigad, Panvel, Maharashtra – 410 206
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Sumit Mantri, A.R.
Revenue by : Shri Anul Gupta, D.R.

Date of Hearing : 29 . 09 . 2022

Date of Pronouncement : 29 . 09 . 2022

ORDER

Per : Kuldip Singh, Judicial Member:

The appellant, M/s. Hope India Foundation (hereinafter referred to as ‘the assessee’) by filing the present appeal, sought to set aside the impugned order dated 06.08.2020 passed by Commissioner of Income Tax (Appeals)-2, Mumbai [hereinafter referred to as the CIT(A)] qua the assessment year 2005-06 on the grounds inter alia that :-

“1. On the facts and circumstances of the case, the Ld Assessing officer erred in reopening the assessment under section 148 only on

the basis that the appellant had not filed the return of income and having transaction with trustees, thus Id Commissioner of Income Tax (Appeal) erred in upholding the same is unjustifiable and need to be quashed.

2. On the facts and circumstance of the case, the Ld. Commissioner of Income Tax (Appeal) erred in upholding the ad-hoc disallowance i.e. 20% of social welfare program expenses without appreciating that the Ld assessing officer had not asked for any details during the assessment proceeding, therefore the ad-hoc disallowances need to be deleted.

3. On the facts and Circumstances of the case, the Ld Commissioner of Income Tax (Appeal) erred in enhancing the disallowances of social welfare program expenses amounting to Rs.4,17,182/- without appreciating that due to Covid-19 pandemic the office is closes and the appellant had not able to submit the details for the same.

4. On the facts and circumstance of the case, the Ld Commissioner of Income Tax (Appeal) erred in upholding the addition of Rs.11,94,800/- on account of Cash deposits, without appreciating that the appellant had submitted the reconciliation of cash along with the details. Therefore the addition on account of unexplained cash deposit needs to be deleted.”

2. Briefly stated facts necessary for adjudication of the controversy at hand are : during the assessment proceedings in case of Shri Saurabh Sharma and Smt. Madhupriya Sharma, Assessing Officer (AO) noticed that aforesaid two persons claimed themselves to be the trustee of M/s. Hope India Foundation, Panvel and there were transactions of cash deposit in the account of M/s. Hope India Foundation and aforesaid Shri Saurabh Sharma and Smt. Madhupriya Sharma. On verification, AO further noticed that M/s. Hope India Foundation had not filed return of income for the year under consideration. AO finding reasons to believe that income of the assessee trust for the year under consideration had escaped assessment and thereby initiated the penalty reopening of assessment under section 147 & 148 of the income Tax Act, 1961 (for short ‘the Act’). It is further noticed by the AO that the

assessee claimed itself to be a trust but failed to furnish a copy of registration under section 12A of the Act, copy of trust deed, proof of carrying out any charitable activities etc. and thereby he held the status of the assessee as AOP instead of trust. Consequently, AO made the addition by assessing the income at Rs.6,82,263/- u/s 143(3) read with section 147 of the Act.

4. Assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has partly allowed the appeal. Feeling aggrieved from the impugned order assessee has come up before the Tribunal by way of filing the present appeal.

5. I have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

6. Bare perusal of the order passed by the Ld. CIT(A) shows that in para 6 and para 7.3 it is categorically recorded by the Ld. CIT(A) that before deciding the issue no document has been called by the AO nor furnished by the assessee during assessment proceedings as well as during the appellate proceedings.

7. In para 6 of the impugned order, the Ld. CIT(A) categorically recorded that “during the course of appellate proceedings the assessee has provided various details to substantiate the cash deposits made in its account and the same

have been perused and placed on record but no findings have been given by perusing the documents by the Ld. CIT(A).”

8. Again in ground No.2 Ld. CIT(A) also recorded that “the appellant has contended that during the course of assessment proceedings the AO did not call for any details qua expenses of Rs.5,21,477/- on account of social welfare programme. Again it was the case of the assessee that the AO did not call for any detail in this regard and as such no evidence has been produced by the assessee. During the appellate proceedings also Ld. CIT(A) has not preferred to call any remand report from the AO”.

9. AO has made ad-hoc disallowance of 20% of Rs.1,04,295/- claimed as expenses by the assessee

10. It is categorically recorded by the Ld. CIT(A) in para 7.3 of the impugned order that assessee made request for adjournment to produce the documents/details which he could not get due to lockdown but no detail was filed by the assessee till 31.07.2020 by giving short adjournment of 3-4 days and passed the order on 06.08.2020.

11. Bare perusal of the impugned order passed by the Ld. CIT(A) and assessment order passed in this case goes to prove that no investigation has been conducted by the AO nor by the Ld. CIT(A) to arrive at the logical perusal by calling upon the assessee to bring on record documents to substantiate its claim. Even it has come on record from the impugned order passed by the Ld. CIT(A) that assessee had sought time from Ld. CIT(A) to file the details which

he could not file due to lockdown during pandemic but sufficient opportunity has not been given to him. To decide the issue once for all I am of the considered view that complete investigation is required by the AO by providing adequate opportunity of being heard to the assessee to which both AO as well as Ld. CIT(A) have agreed. Consequently, impugned order passed by the Ld. CIT(A) is set aside and case is remitted back to AO to decide afresh after providing opportunity of being heard to the assessee. Resultantly, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 29.09.2022.

Sd/-

**(KULDIP SINGH)
JUDICIAL MEMBER**

Mumbai, Dated: 29.09.2022.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.