

IN THE INCOME TAX APPELLATE TRIBUNAL

"H" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No.1165/Mum./2022
(Assessment Year : 2010-11)

Satish Garodia HUF
B/5, Shalimar Apartment
S.V. Road, Andheri (West)
Mumbai 400 058 PAN – AAHHS8501F

..... Appellant

v/s

Income Tax Officer
Ward-25(1)(1), Mumbai

.....Respondent

Assessee by : Shri Shailesh Hemani
Revenue by : Shri Tejinder Pal Singh

Date of Hearing – 25/08/2022

Date of Order – 15/11/2022

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 16/03/2022 passed under section 250 of the Income Tax Act, 1961 (*'the Act'*) by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [*'learned CIT(A)'*], for the assessment year 2010-11.

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

"The following Grounds of Appeal are without prejudice to one another

1. Notice U/s 148 dated 23/2/2015 is illegal and Invalid:

1.1. The Learned commission of Income Tax (Appeal) failed to appreciate that the notice U/s 148 dated 23/02/2015 is illegal and invalid.

1.2. The learned commissioner of Income Tax (Appeal) failed to appreciate that the Appellant was not provided the copy of reasons recorded for reopening, though the same were asked by the appellant vide letter dated 10/4/2015 submitted on 10/04/2015.

2. Reassessment order dated 28/1/2016 is Illegal and Invalid

2.1. The learned commissioner of Income Tax (Appeals) failed to appreciate that the Notice U/s 148 dated 23/2/2015 being illegal and Invalid the consequent reassessment order dated 28/01/2016 is also illegal and Invalid.

3. Addition of total purchases as Bogus purchases

3.1. The learned Commissioner of Income Tax (Appeal) erred in upholding the addition of total purchases made from hawala dealers instead of applying GP ratio on such purchases as addition to the total Income.

3.2. The learned Commissioner of Income Tax (Appeals) failed to appreciate that the Appellant had sold goods and the Books of Accounts are Audited.

4. The Appellant Craves leave to amend alter, add or delete any or all the above Grounds of Appeal."

3. The brief facts of the case as emanating from the record are: The assessee is HUF and is engaged in the business of trading in hardware, engineering goods and provision of supply to shipping companies. For the year under consideration, the assessee filed its return of income on 03/10/2010, declaring a total income of Rs 7,58,751. The return of income filed by the assessee was processed under section 143(1) of the Act and returned income was accepted. Subsequently, reassessment proceedings under section 147 of the Act were initiated in the case of the assessee based on information received from DGIT (Investigation), Mumbai that the assessee is the

beneficiary of bogus purchase bills. Notice under section 148 of the Act was issued and duly served on the assessee. As per the Assessing Officer ('AO'), the assessee neither attended nor filed the return of income in compliance with the aforesaid notice. Subsequently, the assessee made no compliance to the notice issued under section 142(1) along with the questionnaire calling for details. Since the assessee failed to comply with the final show cause notice, the AO proceeded to complete the assessment ex parte under section 144 of the Act based on materials available on record. The AO vide order dated 28/01/2016 passed under section 144 r/w 147 of the Act made an addition of entire purchases of Rs. 42,82,288, by treating the same as bogus as per information received from DGIT (Investigation), Mumbai.

4. In appeal before the learned CIT(A), the assessee raised grounds challenging the invocation of jurisdiction under section 147 of the Act as well as various additions made by the AO. However, the assessee failed to respond to various notices dated 24/12/2020, 01/12/2021, 13/12/2021, and 25/02/2022, delivered to the assessee via ITBA. Accordingly, the learned CIT(A) proceeded to dispose of the appeal considering the materials available on record. The learned CIT(A) vide impugned order dated 16/03/2022, dismissed the ground raised by the assessee challenging the invocation of jurisdiction under section 147 of the Act. The learned CIT(A) after considering the additional evidence filed earlier by the assessee and remand report of AO thereto, restricted the amount of bogus purchases to Rs. 22,50,756, in place of Rs. 42,82,288, as considered by the AO. The learned CIT(A) also rejected

the submission of the assessee to restrict the addition to 12.5% of bogus purchases. Accordingly, the learned CIT(A) restricted the addition to the amount of bogus purchases of Rs. 22,58,756. Being aggrieved, the assessee is in appeal before us.

5. We have considered the rival submissions and perused the material available on record. As per the assessee, the copy of the reasons recorded for reopening the assessment was not provided to the assessee, though the assessee specifically requested for same. It has further been submitted that in the immediately preceding assessment year i.e. 2009–10 the AO had made an addition at 12.5% of bogus purchases vide order passed under section 143(3) r/w section 147 of the Act. It is further submitted that notice of hearing initially issued by the learned CIT(A) was received by the assessee and in response to the same assessee had filed written submission and paper book. However, the assessee was unaware of the new notices issued to the assessee electronically by the learned CIT(A) and therefore assessee could not respond to the same. Further, as the assessee was travelling and its accountant had left, therefore the various notices issued by the AO were also not responded to on behalf of the assessee.

6. From the record, it is evident that the AO has completed the assessment under section 144 of the Act and learned CIT(A) has also passed the order without taking into consideration the submissions made before us. Further, now in appeal before us, the assessee is duly represented by the learned AR and wishes to pursue the litigation against the addition made by the AO.

Therefore, in view of the above, we are of the considered opinion that in the larger interest of justice one more opportunity be granted to the assessee to represent its case, and therefore matter is restored to the file of AO for *de novo* adjudication on all issues raised before us. The assessee shall be at liberty to raise its entire claim before the AO. Further, the assessee is directed to respond to all the notices issued by the AO, without any default. Accordingly, grounds raised by the assessee are allowed for statistical purposes.

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

Order pronounced in the open Court on 15/11/2022

Sd/-
PRASHANT MAHARISHI
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 15/11/2022

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