

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

BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER

**ITA No.2222/M/2018
Assessment Year: 2010-11**

M/s. Mehulkumar Rameshkumar & Co., Ground Floor, Lata Kunj, 2 nd Fofal Wadi, Mumbai – 400 002 PAN: AAUFM9265D	Vs.	DCIT, CC-2(4), Room No.1001, 10 th Floor, Pratishtha Bhavan, Old CGO Bldg., Mumbai - 400020
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Rushabh Mehta, A.R.
Revenue by : Shri Azhar Zain Vayal Parambath, D.R.

Date of Hearing : 12 . 09 . 2022
Date of Pronouncement : 31 . 10 . 2022

ORDER

Per : Kuldip Singh, Judicial Member:

The appellant, M/s. Mehulkumar Rameshkumar & Co. (hereinafter referred to as ‘the assessee’) by filing the present appeal, sought to set aside the impugned order dated 30.12.2016 passed by Commissioner of Income Tax (Appeals), Mumbai [hereinafter referred to as the CIT(A)] qua the assessment year 2010-11 on the grounds inter-alia that :-

1. On the facts and circumstances of the appellant's case and in law the Ld. Commissioner of Income Tax (Appeals) erred in passing an ex-parte order without providing reasonable opportunity of being heard.

2. On the facts and circumstances of the appellant's case and in law the Ld. Commissioner of Income Tax (Appeals) erred in rejecting

books of accounts u/s 145(3) of the Income Tax Act 1 961 as per the grounds stated in the order or otherwise.

3. On the facts and circumstances of the appellant's case and in law the Ld. Commissioner of Income Tax erred in confirming the action of Ld. AO in making an addition of Rs.25, 60,000/- on account of alleged undisclosed commission income.

4. The Appellant craves leaves to add, to amend, alter, modify and / or withdraw any or all of the above grounds of appeal, each of which are without prejudice to one another.”

2. Briefly stated facts necessary for adjudication of the issues at hand are: on the basis of search and seizure operation carried out under section 132 of the Income Tax Act, 1961 (for short ‘the Act’) in case of Gold Sukh Safety Vaults Limited involved in the business of providing lockers on rent, search at the office premises of assessee was also conducted and cash amount of Rs.37,43,000/- was found. During the recording of statement of Shri Maganlal Prajapati under section 132(4) of the Act it has come on record that the aforesaid amount of Rs.37,43,000/- was the undisclosed income of the assessee for A.Y. 2012-13. It has also come on record during investigation that assessee has received cash amount of Rs.40,00,000/- from Sanjay Kumar Sharma as per the noting in diary seized in case of Sanjay Kumar. Declining the contentions raised by the assessee, the Assessing Officer (AO) proceeded to compute the total income of the assessee for the year under consideration at Rs.25,60,000/- and thereby framed the assessment under section 153A read with section 143(3) of the Act.

3. Assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has confirmed the addition by dismissing the appeal ex-parte. Feeling aggrieved assessee has come up before the Tribunal by way of filing present appeal.

4. We 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.

5. At the very outset, it is noticed that the Ld. CIT(A) has passed this order at the back of the assessee. Though the Ld. CIT(A) has recorded in para 2 of the impugned order that assessee has been playing hide and seek by moving adjournment applications on one date or the other and then remained absent on the next date but ultimately assessee did not turn up on 29.12.2016 and the Ld. CIT(A) proceeded to decide the appeal ex-parte. In para 10 of the impugned order it is specifically recorded by the Ld. CIT(A) that no oral or written submissions have been made by the assessee. Now the Ld. A.R. for the assessee contended that one opportunity may be given to the assessee to plead his case before Ld. CIT(A) and he will appear on each and every date of hearing.

6. The Ld. D.R. for the Revenue, on the other hand, opposed further opportunity to be given to the assessee as the assessee has already availed so many opportunities.

7. No doubt that numerous opportunities were granted by the Ld. CIT(A) to the assessee but I am of the considered view that to decide the issue once for all on merits and to curtail the further multiplicity of the proceedings opportunity is required to be given to the assessee in the interest of justice.

8. In view of what has been discussed above, impugned order passed by the Ld. CIT(A) is hereby set aside to be decided by Ld. CIT(A) afresh after providing opportunity of being heard to the assessee. Needless to say that the assessee shall appear before the Ld. CIT(A) on each and every date fixed.

Order pronounced in the open court on 31.10.2022.

**Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

Mumbai, Dated: 31.10 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.