

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI RAHUL CHAUDHARY (JUDICIAL MEMBER)**

**ITA No. 5147/MUM/2019
Assessment Year: 2015-2016**

Salim Ibrahimhai Jaka,
2nd floor, Malhotra House,
Office No. 1 Opp. GPO Fort,
Mumbai-400 001.

Vs.

Dy. CIT Central Circle-
3(3),
Room No. 1923, 19th
floor, Air India Building,
Nariman Point,
Mumbai-400021.

**PAN No. ABPPJ 5700 N
Appellant**

Respondent

Assessee by : None
Revenue by : Mr. Sanjay Vishwas Rao
Deshmukh, CIT-DR

Date of Hearing : 01/11/2022
Date of pronouncement : 22/12/2022

ORDER

PER OM PRAKASH KANT, AM

This appeal has been preferred by the assessee against the order dated 21.06.2019 passed by the Ld. Commissioner of Income Tax (Appeals) [in short 'the Ld. CIT(A)'] for assessment year 2015-16, raising following grounds :



1. *On the facts and circumstances of the case as well as in Law, the Learned CIT(A) has erred in confirming the action of the Learned Assessing Officer in passing an Assessment Order u/s. 153A r.w.s. 143(3) of the Income Tax Act, 1961, without considering the facts & circumstances of the case.*

2. *On the facts and circumstances of the case as well as in Law, the Learned Assessing Officer as well as Learned CIT(A) has erred in not appreciating the fact that there was no effective notice u/s. 143(2) of the Income Tax Act.1961 and accordingly Assessment Order passed u/s. 143(3) r.w.s 153A is bad in law.*

3. *On the facts and circumstances of the case as well as in Law, the Learned CIT(A) has erred in confirming the action of the Learned Assessing Officer in making an addition Rs.20,23,260/- on account of alleged unaccounted miscellaneous cash expenses, without considering the facts circumstances of the case.*

2. Briefly stated, facts of the case are that in this case search action u/s 132 of the Income-tax Act, 1961 (in short 'the Act') was carried out on 17.12.2014 along with search in the case of IB Commercial Ltd. Subsequently, notice u/s 153A of the Act was issued in the assessment years involved in search period. However, no compliance was made by the assessee and therefore, subsequently notice u/s 142(1) of the Act was issued asking the assessee to file return of income, balance sheet profit and loss



account, audit report etc. no compliance was made by the assessee. The Assessing Officer in view of document seized in the course of search made addition for the cash deposit of Rs.20,23,260/- found during the course of search.

3. On further appeal, the Ld. CIT(A) rejected the objection challenging validity of the assessment as well as addition on merit. Aggrieved, the assessee is in appeal before the Tribunal by way of raising grounds as reproduced above.

4. None attended on behalf of the assessee despite notifying and therefore appeal was heard ex-parte qua the assessee after hearing the arguments of the Ld. Departmental Representative (DR).

5. Ground No. 1 is general in nature, therefore dismissed as infructuous.

6. Ground No. 2 of the appeal of the assessee is concerned the finding of the Ld. CIT(A) is reproduced as under:

“5.1 It is noted that the return of income of the assessee us. 139(1), for the relevant year was due on 31.07.2015 and was extended to 31.08.2015 by CBDT. However, the same was not filed by the assessee even by 01.06.2016 which is



the date of the notice us. 153A issued by the AO. Even in response to the said notice us. 153A dated 01.06.2016 calling for the return to be filed within 30 days, there was no compliance on the part of the assessee. In fact, only as late as 07.11.2016, which is after a lapse of 5 months from the date of issue of notice us. 153A, the assessee submitted the copy of the return of income etc. in Tapal. The notice u/s 143(2) dated 18.10.2016 was issued selecting the case for scrutiny and notices u/s 742(1) were issued only for submission of the details/information in connection with the search related assessment. In view of such a factual scenario, the presumption of the assessee that the said notice us 142(1) was issued by the AO calling for his return of income itself is erroneous. This is more so considering that the assessment proceedings in this case are related to the search action and are not regular assessment proceedings for which notices us 142(1) are issued not only for submission of the details/information but also for submission of the return of income u/s 139. It is also noted that the assessee has neither filed any return of income for the relevant year us. 139 nor us. 153A even after the expiry of the prescribed time period. Therefore, no infirmity is found in the action of the AO and the contention of the assessee is rejected. Accordingly, Ground Nos. 1, 2 & 3 of the appeal are dismissed.”

6.1 We find that assessee has not filed any return of income and therefore, there was no requirement issue of notice u/s 142(1) of the Act. The ground raised by the assessee is therefore rejected.



7. Ground No. 3 of the appeal of the assessee relates to addition of Rs.20,23,260/- for deposit of cash expenses. The finding of the Ld. CIT(A) is reproduced as under:

“6. Ground No 4 of the appeal relates to the merit of the addition made by the AO of Rs 20,23,260/- being the unaccounted miscellaneous cash expenses incurred by the assessee as per the documents seized in course of the search action: As noted earlier, a search action u/s. 132 was carried out in the case of M/s. I.B Commercial Ltd. and our assessee being a related person, was also covered in the said search. Notice u/s. 153A was duly issued on 01.06.2016 and served on the assessee. However, the assessee did not comply to the said notice nor requested for any adjournment. Further, notice u/s. 142(1) was issued and served on the assessee requesting for submission of copy of return of income, Balance sheet, P&L Alc.. Audit Report etc. Again, there was no compliance from the assessee's side Thereafter, statutory notices u/s. 143(2) and 142(1) dated 18.10.2016 were issued and served on the assessee. On the said notices also, there was no compliance Finally, on 07.11.2016, the assessee filed the primary details in Tapal including the return of income. In course of the assessment proceedings, the A noted that as per the documents seized in course of the search action, the assessee has incurred unaccounted miscellaneous expenses on purchase of jewellery, security expenses cash deposits etc. of Rs. 20,23,260/-. Therefore, the AO issued a final show cause notice asking the assessee to explain as to why the said amount of Rs. 20,23,260/- related to the unaccounted cash expenditure as per the



seized documents should not be added to his total income. Since, the assessee was not complying to the statutory notices, this final show cause notice was also accompanied with the summons. However, to this final show cause notice also, there was no compliance The AO, therefore, proceeded to add the said amount of Rs. 20,23,260/- to the total income of the assessee.

6.1 In the course of the appellate proceedings, the assessee made the following written submissions.

Ground No-4:

"The Leamed Assessing Officer has erred in making an addition Rs 20,23, 260/-on account of miscellaneous expenses without considering the facts & circumstances of the case.

At the outset we would like to submit that the Ld. AO has made the addition by stating as follows "As per Appraisal Report at page no. 118 at para no. 6.12, regarding the summary of unaccounted cash expenses/ withdrawals/ payments/ accommodation entries made by the assessee. A summary made on the basis of the entries of cash payments/expenses made by the assessee group as found in the loose paper/documents found and seized during the search. The same is inventorized as Annexure-XIII to the Appraisal Report.

However, while doing so, the AO has merely stated in his order that since appraisal report mentioned a summary of expenses/ withdrawals etc., the same is required to be added in the hands of the appellant. However, this so called



"appraisal report" has never been confronted to the appellant by the AO. The contents of such "Appraisal Report" are completely unverified and by the appellant no opportunity has ever been given to the appellant to rebut the contents of this so called appraisal report. Such a high-handed action on the part of the department is in complete violation of the principles of natural justice and is completely bad in law. Therefore, no reliance could be placed on any such appraisal report, unless the same had been confronted to the assessee

Furthermore, it is important to mention here that the appraisal report is merely an internal document of the department. It is a report issued by one vertical of income tax department to another. To say that such a report constitutes any evidence against the appellant is completely absurd and bad in law. If such an approach was permitted by law, the result would be that one wing of the income tax department would issue internal reports to another wing and hundreds of crores of rupees could be bought to tax on the basis of such "evidences". Thus, the contention of the AO that the appellant had incurred expenses amounting to Rs. 20.23.260/- on the basis of an internal report of the department without any external evidences whatsoever is completely bad in law. Furthermore, the Ld. AO has stressed upon the "the loose papers found during the course search proceedings reveals unaccounted expenses/withdrawals/payments/accommodation entries made by the assessee" and relying upon the same, he has proceeded to make the addition. However, the Ld. AO has failed to prove that how such a conclusion was drawn based on the seized documents. The AO has not given any correlation between the seized papers and the ultimate



conclusion drawn by him. Thus, the addition made on the basis of such so called impounded documents is baseless and cannot be sustained.

Further and without prejudice to the above, we would also like to submit that the AO has provided no basis whatsoever during the course of assessment proceedings or in the assessment order while making the said addition and has erred in passing a non-speaking order. An order must be a speaking order that means an order must speak for itself. The order should stand the test of legality, fairness and reason at all the higher appellate forums. That is, the order should contain all the details of the issue, clear findings and a reasoned order. It is a well decided judicial principle that every order passed by an AO must be a speaking order. With regards to the same we would like to rely on the following case law:

Banarsi Das Cotton Mills (P) Ltd. vs State Of Haryana And Anr. on 7 March, 1996:

3. Although the impugned order/notice has been challenged on various grounds, we are of the opinion that the same is liable to be quashed on the short ground it does not contain reasons. There can be no manner of doubt that while deciding the appeal the Higher Level Screening Committee acts as a quasi judicial authority and it is duty bound to record reasons in support of its decision. The recording of reasons and communication thereof is imperative for compliance of the principles of natural justice which must inform the proceedings of every quasi judicial body and even in the absence of a statutory provision or administrative instructions requiring recording of reasons in support of the



orders, the quasi judicial authority must pass speaking orders so as to stand the test of scrutiny."

Thus the Ld. AO has not elaborated on what basis has the addition been made by him. The assessment order was cryptic in nature and therefore any addition made on the basis of the same is bad in law.

6.2 The assessee has disputed the action of the AO of making the said addition primarily on the ground that the evidences relied upon were not confronted to him prior to making the said addition of Rs. 20,23,260/-. As noted earlier, there was complete non-compliance on the part of the assessee in the proceedings initiated by the AO us. 153A. The assessee complied to the notice us. 153A calling for the return of income only after a lapse of around 5 months. Further, even the original return of income u/s. 139(1) was not filed by the assessee long after the expiry of the due date. Moreover, the assessee also failed to respond to the final show cause notice issued accompanied by summons as to why an addition of Rs. 20,23,260/- should not be made being the unaccounted miscellaneous expenditure incurred by the assessee as per the documents seized in course of the search action. Therefore, no infirmity is found in the action of the AO of making the said addition of Rs. 20,23,260/-. Accordingly, Ground No. 4 of the appeal is dismissed."

7.1 Before us, also no evidence in support of source of the cash has been filed and therefore we do not find any infirmity in the order of the Ld. CIT(A) on the issue-in-dispute. Thus, ground of the appeal of the assessee is accordingly dismissed.



8. In the result, the appeal filed by the assessee is dismissed.

**Order pronounced under Rule 34(4) of the ITAT Rules,
1963 on 22/12/2022.**

**Sd/-
(RAHUL CHAUDHARY)
JUDICIAL MEMBER**

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;
Dated: 22/12/2022
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Sr. Private Secretary)
ITAT, Mumbai