IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "SMC", MUMBAI

BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER

ITA No.1031/M/2022
Assessment Year: 2009-10

Shri Mahendra Jain, 202/15, Ground Floor, Sant Sewa Marg, 2nd Floor, Kumbharwada, Mumbai – 400 004 **PAN: AHGPJ5457P**	Vs.	Income Tax Officer – 19(2)(3), Room No.203, Matru Mandir, Mumbai - 400007
(Appellant)		(Respondent)

Present for:
Assessee by : None
Revenue by : Shri Azhar Zain Vayal Parambath, D.R.

Date of Hearing : 12 . 09 . 2022
Date of Pronouncement : 29 . 09 . 2022

O R D E R

Per : Kuldip Singh, Judicial Member:

The appellant, Shri Mahendra Jain (hereinafter referred to as 'the assessee') by filing the present appeal, sought to set aside the impugned order dated 28.03.2022 passed by Commissioner of Income Tax (Appeals)-50, Mumbai [hereinafter referred to as the CIT(A)] qua the assessment year 2009-10 on the grounds inter alia that :-

> ***"1.1 The Ld. Commissioner of Income - tax (Appeals) - 5O, Mumbai ["Ld. CIT (A)"], erred in confirming the action of the A.O. in initiating reassessment proceedings and framing the assessment of the Appellant by invoking the provisions of section 147 r.w.s. 148 of the Income tax Act, 1961 ["the Act"].***
>
> ***1.2 While doing so, the Ld CIT (A) failed to appreciate that:***

(i) The case of the appellant did not fall within the parameters laid down by section 147 r.w.s. 148 of the Act;
(ii) The necessary preconditions for initiating the reassessment proceeding and completion thereof were not satisfied.

1.3 it is submitted that in the facts and the circumstances of the case, and in law, the reassessment framed is bad, illegal and void.

2. NATURAL JUSTICE

2.1 The Ld, CIT (A) erred in confirming the action of the A.O. in not granting proper, sufficient and adequate opportunity of being heard to the Appellant while framing the assessment.

2.2 It is submitted that in the facts and the circumstances of the case, and in law, the assessment so framed be held as bad and illegal, as the same is framed in breach of the principles of natural justice and without application of mind to the facts brought on record by the Appellant.

WITHOUT PREJUDICE TO THE ABOVE

3.1 The Ld. CIT (A) erred in confirming the action of the A.O. in making addition of Rs- 46,3S,400/- to the income of the Appellant on account of non - genuine purchases.

3.2 While doing so, the Ld. CIT (A) erred in confirming the action of the A.O. in rejecting the book result u/s 145 (3) of the Act.

3.3 While doing so, the Ld. CIT (A) erred in:

(i) Basing his action only on surmises, suspicion and conjecture;

(it) Taking into account irrelevant and extraneous considerations; and

(iii) Ignoring relevant material and considerations as submitted by the Appellant.

3.3 It is submitted that m the facts and the circumstances of the case, and in law, no such addition was called for.

3.4 Without prejudice to the above, assuming - but not admitting - that some addition was called for, it is submitted that the computation of the addition made by the A.O. is arbitrary, excessive and not in accordance with the law."

2. Briefly stated facts necessary for adjudication of the controversy at hand are: initially assessee's return of income declaring total income at Rs.2,12,720/- was processed under section 143(1) of the Income Tax Act, 1961 (for short 'the Act'). Subsequently, the case was reopened under section 147 of the Act by way of issuance of notice under section 148 of the Act after recording reasons. On the basis of information received from DGIT (Inv.), Wing, Mumbai that "as per information received from Sales Tax Department of Maharashtra some dealers under M Vat, 2002 indulging into the practice of providing accommodation entries in the form of issuing bogus sales/purchase bills without supplying any goods but providing only accommodation entries. Assessee found to have taken accommodation entries to the tune of Rs.46,35,400/- detailed as under:

Sr. No.	Name of Hawala Party	F.Y.	Amount
1	Manibhadra Trading Co.	2008-09	13,24,117
2	Manav Impex	2008-09	9,59,720
3	Mahavir Corpn.	2008-09	1,61,480
4	Aayush Enterprises	2008-09	4,58,369
5	Shree Ganesh Steel	2008-09	8,08,372
6	Trishila Tradewings	2008-09	9,23,333
	TOTAL		46,35,400

3. On failure of the assessee to respond to any notices/letters issued by the Assessing Officer (AO), AO proceeded to hold that the purchases shown to have made by the assessee from the aforesaid parties and claimed as expenses in his profit & loss account are not genuine, thus entire bill entries taken for

accommodating purpose amounting to Rs.46,35,400/- are treated as non genuine and thereby added back to the total income of the assessee. The AO consequently framed the assessment under section 144 read with section 147 of the Act.

4. Assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has upheld the addition made by the AO by dismissing the appeal filed by the assessee. Feeling aggrieved the assessee has come up before the Tribunal by way of filing present appeal.

5. Notice for the service of the assessee was issued for 04.08.2022, on which assessee was represented by Shri Ritesh Upadhyay and on whose request the case was adjourned to 12.09.2022 on which date none appeared on behalf of the assessee nor any application for adjournment filed. It appears that the assessee is not interested in pursuing this appeal. So the Bench has decided to dispose of this appeal on the basis of documents brought on record by the parties to the appeal and with the assistance of the Ld. D.R. for the Revenue.

6. We have heard the Ld. Departmental Representative for the Revenue, 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 case law relied upon.

7. Undisputedly, the AO has framed the assessment ex-parte without taking on record any submissions or explanation of the assessee. Bare perusal of the assessment order goes to prove that notice under section 148 and notice under section 142(1) of the Act were issued and assessee reported to have not appeared and the AO

proceeded to pass the best judgment assessment order on the basis of material available on record.

8. At the same time, perusal of the impugned order passed by the Ld. CIT(A) also goes to prove that the assessee had filed additional evidence during the appellate proceedings which have not been allowed by the Ld. CIT(A) by returning following findings:

> ***"6, Filing of Additional Evidence by the appellant during the present appellate proceedings: During the course of the present appellate proceedings, as per the details available on record it is noted that the appellant has made submissions dated 01.07.2016 and 20.07.2016, which have been reproduced above and some details filed are apparently in the nature of additional evidence/s as per the provisions of Rule 46A of the Income Tax Rules, 1962 (hereinafter referred to as "the Rules"). This aspect gets fortified by the fact that the Ld. AO in the impugned order has recorded a finding that the assessee-appellant had not responded to any of the notices during the reassessment proceedings which compelled the Ld. AO to pass, a best-judgment assessment, as has been reproduced above in this order. However, the record indicates that, neither the aforesaid submissions categorise these submissions as submissions for filing additional evidence/s nor the appellant has made any separate application in this regard these submissions comprise filing additional evidence/s and citing any reasons for considering the admissibility of such additional evidence/s in terms of the provisions of Rule 46A of the IT Rules, 1962. In other words, it is noted that the appellant has not even mentioned the issue of submission of additional evidence, leave aside the statutory onus of making a formal application and establishing that production of such captioned additional evidence before the AO was prevented by one of the/combination of the reasons as per sub-clauses of Rule 46A(1)(a) to 46A(1)(d), hence, it is abundantly clear that the appellant itself has not initiated/invoked of provisions of Rule 46A, hence, there is no cause/occasion for the CIT(A) to lead to and follow the provisions of Rule 46A and hence, in view of the above discussion and considering the facts and circumstances of the case, the details/evidences filed vide submissions dated 01.07.2016 and 20.07.2016 by the appellant to extent of the same being in the nature of additional evidence cannot be taken into consideration for adjudication of the present appeal."***

9. So perusal of the aforesaid findings returned by the Ld. CIT(A) rejecting the plea of the assessee to bring on record the

additional evidence shows that the same has been rejected on the basis of hyper technical grounds. It is cardinal principle of natural justice that assessee must be given fair and adequate opportunity of being heard before deciding the issue raised by him. Moreover, the assessee cannot be punished for the negligence or ignorance of his representative in not filing the application for leading additional evidence in proper format. So I am of the view that the assessee must be given an opportunity to plead and defend its case. Since AO has also passed an ex-parte order it would be in the interest of justice to decide the matter once for all by remitting the case back to the AO to decide afresh after providing opportunity of being heard to the assessee. Consequently, 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.