

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

**BEFORE SHRI ABY T VARKEY, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No. 157/Mum/2023
(A.Y.2020-21)**

Shri Dayaram Hariram Jaiswal, Badshah Compound Bhangarwala Chawl, M.G.Road, Kandivali (West) Mumbai - 400067	Vs.	Asst. Commissioner of Income Tax, Central Circle 2(2) Rom No. 806, 8 th Floor, Pratishtha Bhavan, Old CGO Annexe, M.K. Road, Mumbai - 400020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AEJPJ0566M		
Appellant	..	Respondent

Appellant by :	Haridas Bhat
Respondent by :	Bharat Andhale

Date of Hearing	16.03.2023
Date of Pronouncement	28.03.2023

आदेश / O R D E R

Per Amarjit Singh (AM):

The present appeal filed by the assessee is directed against the order passed by the CIT(A)-48, Mumbai dated 16.12.2022 for A.Y. 2020-21. The assessee has raised the following grounds before us:

“GROUND I

1. *On the facts and circumstances of the case, and in Law, The CIT(A), erred in confirming the Addition of Rs.11,85,620/- U/s 69A of the Act, without giving proper opportunity*
2. *On the facts and circumstances of the case and in law the CIT(A) failed to appreciate that*
 - a) *The appellant. On 01.07.2021 received information on mobile message about issuance of notice u/s 143(2), dated 30.06.2021 for*

assessment year. 2020-21 and on 04.07.2021 received another message for notice u/s 153A for the Assessment year 2014-2015 to 2019-2020, all dated 30.6.2021.

- b) Later on none of the notices were served on the Assessee.*
- c) Assessee came to know about the notices and order on random visit to the site to check the status.*
- d) It is seen that the notices were sent to wrong email id by the officer. Neither any SMS alert nor any physical copies of the notices were served.*
- e) The Assessment is made in a hurry without giving the opportunity much earlier than the due date of completing the Assessment.*

3. Thus the appellant therefore prays that the order passed without giving proper opportunity is bad at law and the same may be annulled.

GROUND II

- 1. On the facts and circumstances of the case, and in Law, The CIT(A) erred in confirming the Addition of Rs.11,85,620/- U/s 69A of the Act, is bad at law.*
- 2. On the facts and circumstances of the case and in law the CIT(A) failed to appreciate that*
 - a) There was neither any search and seizure action carried out in the case of the Assessee on 17.10.2019 nor any warrant u/s 132 of the Act was issued and executed in the name of the Assessee.*
 - b) The Assessee was served with the notice U/s131 and the statement was recorded in response to the same.*
- 3. Thus the appellant therefore prays that the order passed based on the false facts is bad at law and the same may be annulled.*

GROUND III

- 1. On the facts and circumstances of the case, and in Law, CIT (A), erred in confirming the Addition of Rs.11,85,620/- U/169A of the Act ignoring the submissions made.*
- 2. On the facts and circumstances of the case and in law the CIT(A) failed to appreciate that*
 - a) The Appellant has time and again including the initial statement U/s131 has mentioned the only fact that the cash belong to the business of his wife Smt. Manjudevi Jaiswal, in the name of Murlidhar Trading Co., and he did the job of collection.*
 - b) The proof of the business of Smt. Manjudevi Jaiswal were submitted, her books were audited U/s 44AB, however the AD commented that the returns and filed U/s 44AD based on surmise and conjecture.*

c) The explanation of the Source of Cash was explained at every stage, while replying to the summons U/s131 as well as notice U/s143(2).

3. Thus the appellant therefore prays that the cash balance is explained by the Appellant the addition made without considering the facts may please be deleted.

The appellant craves leave to add, alter, amend or delete any of the above grounds of appeal.”

2. Fact in brief is that return of income declaring total income of Rs.6,04,760/- was filed on 17.12.2020. The case of the assessee was subject to scrutiny assessment and notice u/s 143(2) of the Act was issued on 30.06.2021. In the case of the assessee information was received on 17.04.2019 from Executive Magistrate Sion Koliwada constituency Mumbai that Election Commission of India Static Surveillance Team had found cash of Rs.11,85,620/- from vehicle No. MH47AB6559 driven by Shri Dayaram Hariram Jaiswal nearby Sion hospital Signal. A statement u/s 131 of the Act of the assessee was recorded on 18.04.2019 and he stated that the source of amount of Rs.11,85,620/- was from sale proceeds of groundnuts/grams through the proprietary concern M/s Murlidhar Trading Company of his wife, Mrs. Manjudevi Dayaram Jaiswal. The AO stated that in support of his claim the assessee could not produce any evidence to establish that cash found was pertained to the business of his wife. Therefore, the cash amounting to Rs.11,85,620/- was treated as unexplained money of the assessee u/s 69A of the Act.

3. Aggrieved, the assessee filed the appeal before the Id. CIT(A). The Id. CIT(A) has dismissed the appeal of the assessee.

4. Heard both the sides and perused the material on record. During the course of appellate proceedings before the Id. CIT(A) the assessee has filed written submission. The assessee has clarified that the amount found from the vehicle of the assessee was belonged to M/s Murlidhar Trading Company (proprietor Smt. Manjudevi Jaiswal) and the cash was

collected from customer against the sales proceeds made from the above referred proprietary concern. The assessee also explained that in response to the summon issued it had submitted the following documents:

- “1. List of customers who had paid the cash.
2. Copies of sale bills
3. Ledger of the customer who were payers of the cash.
4. Copies of Av. Tax paid challans
5. Smt. Manjudevi Jaiswal also informed about the Sales Rs.33,23,833/- and purchases 72,50,825 (Provisional) achieved for the period up to 17.04.2019.”

The assessee has also filed paper book comprising list of sales bills against which cash received, copies of cash bills, ledger of cash sales to customers, statement recorded u/s 131 of the Act of the assessee and his wife and reply filed in response to the summon issued etc.

The ld. Counsel contended that assessment was completed without providing opportunity to the assessee. In this regard, the ld. Counsel submitted that assessee had provided correct email id on income tax profile for long period as sureshjaiswal007@gmail.com and the same email id was also provided while filing return of income for assessment year 2020-21. However, the A.O has not communicated the notices issued u/s 142(1) in respect of the addition to be made in the assessment. The ld. Counsel also pointed out that such notices might have been issued on the unused very old email id of the assessee that was jaiswal suresh3004@gmail.com. Before the ld. CIT(A) the assessee had specifically submitted that notices were sent to the wrong email id by the A.O and neither any sms alert nor any physical copies of the notices were served on the assessee, therefore, assessment was completed without providing requirement opportunity. In this regard, we find that the ld. CIT(A) has neither called any remand report from the AO nor controverted the above referred deficiencies in the assessment proceedings pointed out by the assessee. Normally,

whenever any irregularity crept in the proceeding then after removing the irregularity proceeding is to be initiated from that stage but by remitting the issue to the Id. First appellate authority we would be multiplying the litigation, because the Id. CIT(A) would call for a remand report from the A.O and proceedings would commence on two stages. In order to avoid that situation we would deem it proper to set aside the order of both the Revenue authorities and to remit all the issues to the A.O. for deciding denovo on merit after providing adequate opportunity to the assessee. It is needless to say that observation made by us will not injure or impair the case of the A.O and will not cause any prejudice to the defence explanation of the assessee.

5. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 28.03.2023

Sd/-

(Aby T Varkey)
Judicial Member

Sd/-

(Amarjit Singh)
Accountant Member

Place: Mumbai

Date 28.03.2023

Rohit: PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.