

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'SMC' BENCH
MUMBAI**

BEFORE: SHRI KULDIP SINGH, JUDICIAL MEMBER

**ITA No.635/Mum/2023
(Assessment Years :2012-13)**

Sujatha Sudhakar Shetty D-1A Wing, Sun-N-Dew, Sundar Nagar, Kalina Santacruz (E), Mumbai- 400098.	Vs.	ITO-6(3)(4) 5 th Floor, Room No. 524, Aayakar Bhavan, M.K. Road, Mumbai.
PAN/GIR No. AAOPS8640J		
(Appellant)	..	(Respondent)

Assessee represented by	Shri Ravikant S. Pathak
Revenue represented by	Shri Joginder Singh, Sr. AR
Date of Hearing	08/05/2023
Date of Pronouncement	08/05/2023

ORDER

PER KULDIP SINGH (J.M):

The Appellant, Sujatha Sudhakar Shetty (hereinafter referred to as the 'assessee') by filing the present appeal, sought to set aside the impugned order dated 10.01.2023 passed by the National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as the 'CIT(A)'] qua the assessment order for Assessment year 2012-13 on the grounds inter-alia that:-

“1. The Commissioner of Income Tax(Appeals), National Faceless Appeal Centre, Delhi ['CIT(A)'] erred in passing the order, without providing sufficient opportunity of being heard to the Appellant to represent its case.

The Appellant submit that the CIT(A) ought to have given sufficient opportunity of being heard to the Appellant, and on the facts and

circumstances of the case the appeal shall be set aside to the file of CIT(A) for fresh adjudication.

2. The CIT(A) erred in confirming the action of AO in assessing the total income u/s 143(3) r.w.s.147 of the LT. Act at Rs.7,92,390/- as against returned income of Rs.4,39,820/- under normal provisions declared by the Appellant in her return of income.

The Appellant submits that the notice issued u/s 148 and reopening of assessment u/s 147 is bad in law, illegal, ultra- virus and contrary to the provision of the I.T. Act and shall be quashed.

3. (a) The CIT(A) erred in confirming the disallowance of depreciation on vehicles to the extent of Rs.3,52,572/- (correct figure Rs. 2,59,498/-), being depreciation on assets treated by the AO as not in the name of the appellant herself.

The Appellant submits that vehicles was registered in the name of the appellant herself. The vehicles were exclusively and wholly used for the purpose of business and the depreciation claimed be allowed as deductible expense for the year.

(b) In the alternative and without prejudice to the above ground, the AO has not disputed the income earned by renting of the vehicles considered as not to be the assets of the Appellant and thus depreciation on the same should be allowed to the Appellant.

4. The CIT(A) erred in confirming the action of AO in charging interest of Rs. 28,880/- u/s 234D of the IT. Act.

Your Appellant craves leave to add, to alter, or to amend the aforesaid grounds of Appeal.”

2. Briefly stated, facts necessary for consideration and adjudication of the issues at hand are: The assessee is an individual and Director in company M/s Kohinoor Printer Private Limited and is also into the business of renting of vehicles owned by her, claimed income from salary, business and other sources. The return filed by the assessee was processed under section 143(1) of the Income Tax Act, 1961 (in short, “the Act”), which was reopened on perusal of ITS details available on ITD system that the

assessee had received rental income and salary to the tune of Rs. 21,50,072/- which was not fully offered for taxation. The assessee had offered only salary income to the tune of Rs. 4,69,157/- along with business and other income. Thus the AO had reason to believe that the income earned by the assessee to the tune of Rs. 16, 80,915/- has escaped assessment and thereby reopened the same by initiating proceedings under section 147/148 of the Act. Declining the contentions raised by the assessee the AO proceeded to make the addition of Rs. 3,52,572/- by way of disallowance of depreciation of asset and thereby framed assessment under section 143(3) r.w.s. 147 of the Act.

3. Assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has confirmed the disallowance by dismissing the appeal filed by the assessee. Feeling aggrieved with the impugned order passed by the Ld. CIT(A), assessee has come up before the Tribunal by way of filing the present appeal.

4. I have heard the Ld. Authorised representative of the parties to the appeal, perused the order passed Ld. Lower Revenue Authorities and material available on record in the light of the case law applicable.

5. At the very outset, it is brought to the notice of the Bench by the Ld. AR for the assessee that Ld. CIT(A) has passed the impugned order at back of the assessee without serving any notice upon him, which fact has not been controverted by the ld. DR for the Revenue.

6. We have perused the impugned order passed by the Ld. CIT(A) particularly para-4, which goes to prove that the ld. CIT(A) reported to have been issued 3 notices to the assessee dated 13.01.2021, 24.03.2022 and 04.11.2022, but failed to bring on record if such notices were ever served upon the assessee nor the mode of issuance of such notice has been brought on record by the ld. CIT(A).

7. We are of the considered view that effective opportunity of being heard has not been given to the assessee by the ld. CIT(A) which is a sine qua non for imparting justice. So the impugned order passed by the ld. CIT(A) is not sustainable in the eyes of law hence, set aside. The appeal is remanded back to the ld. CIT(A) to decide afresh after by providing adequate opportunity of being heard to the assessee

8. Resultantly, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 08/05/2023.

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Mumbai; Dated 08/05/2023
Santosh, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT

5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Sr. Private Secretary / Asstt. Registrar)

ITAT, Mumbai

		Date	Initial	
1.	Draft dictated on	09/05/2022		Sr.PS
2.	Draft placed before author	10/05/2023		Sr.PS
3.	Draft proposed & placed before the second member			JM/AM
4.	Draft discussed/approved by Second Member.			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			Sr.PS/PS
6.	Kept for pronouncement on			Sr.PS
7.	File sent to the Bench Clerk			Sr.PS
8.	Date on which file goes to the AR			
9.	Date on which file goes to the Head Clerk.			
10.	Date of dispatch of Order.			
11.	Dictation Pad is enclosed	Yes		