

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

**BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &
SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No. 979 & 980/Mum/2023
(Assessment Year: 2012-13 & 2013-14)**

D. Ketan & Co, 310, Sai Leela, Commercial Complex, Opp Moksh Plaza, S.V. Road, Borivali (W) Mumbai-400091.	बनाम/ Vs.	ACIT – 32(1), Room.no 702, Kautliya Bhavan, G-Block,BKC, Bandra (E) Mumbai-400051.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AADFD2513L		
(अपीलार्थी /Appellant)		(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से / Appellant by :	Mr.D.C.Saboo &Mr.ShyamSaboo.AR
प्रत्यर्थी की ओर से/Respondent by :	Ms. Kavita Kaushik.DR

सुनवाई की तारीख / Date of Hearing	12/06/2023
घोषणा की तारीख /Date of Pronouncement	14/06/2023

आदेश / ORDER

PER PAVAN KUMAR GADALE - JM:

These are the two appeals filed the assessee against the separate orders of the CIT(A)/National Faceless Appeal Centre (NFAC) Delhi passed u/s 250 of the Act.

2. Since the issues in these appeals are common and identical, hence are clubbed, heard and a consolidated order is passed. For the sake of convenience, we shall take up the ITA No. 979/Mum/2023 for the A.Y. 2012-13 as a lead case

and the facts narrated. The assessee has raised the following grounds of appeal:

1. *Appellant was prevented by sufficient cause in not making submission before CIT(A)/NAFC.*
2. *CIT(A) has erred in confirming addition made by AO of interest paid to NBFC without deduction TDS u/s 40(a)(ia) Rs. 6,02,279/-*
3. *CIT(A) has erred in confirming addition made by AO Rs. 26,211 being adhoc 10% of telephone and conveyance.*
4. *AO has erred in levying interest u/s 234A/B/C*
5. *Your appellant craves your leave to add alter & modify the grounds of appeal.*

3. The brief facts of the case are that, the assessee is a partnership firm and is engaged in the business as dealer of Iron and Steel. The assessee has filed the return of income for the A.Y 2012-13 on 28.09.2012 disclosing a total income of Rs.24,53,100/- and the return of income was processed u/s 143(1) of the Act. Subsequently the case was selected for scrutiny under CASS and notice u/s 143(2) and 142(1) of the Act along with questionnaire are issued. In compliance, the Ld. AR of the assessee appeared from time to time and filed the details and the submissions. The Assessing Officer (AO) on perusal of the information and financial statements found that the assessee has obtained loans from three Non-banking Financial Institutions(NBFC) and paid interest of Rs.

6,02,279/-. Whereas the assessee has not deducted the TDS on the interest paid to non banking financial institutions. The AO is of the opinion that as per the provisions of Sec.194A of the Act, the assessee is liable to deduct TDS on the interest payments to NBFC's and invoked the provisions of Sec. 40(a)(ia) of the Act and made disallowance of Rs.6,02,279/-.Further the AO on perusal of the profit and loss account, found that the assessee has claimed telephone expenses of Rs.1,02,395/- and conveyance expenses of Rs.1,59,713/- and the assessee has not proved that the said expenditure was incurred exclusively for business purpose and hence the AO has estimated @10% of expenses which works out to Rs 26,211/- towards personal element and assessed the total income of Rs. 30,81,590/-and passed the order U/sec143(3) of the Act dated 11-03-2015..

4.Aggrrieved by the order, the assessee has filed an appeal before the CIT(A), whereas the CIT(A) has considered the grounds of appeal, statement of facts and findings of the AO and has issued notices of hearing and since there was no compliance by the assessee to notices. Therefore the CIT(A) considering the information on record has confirmed the action of the A.O and dismissed the appeal. Aggrrieved by the order of the CIT(A), the assessee has filed an appeal before the Hon'ble Tribunal.

5. At the time of hearing, the Ld. AR submitted that the CIT(A) has erred in confirming the action of the Assessing officer overlooking the submissions made in the assessment proceedings. Further the assessee has a good case on merits and shall substantiate with the material evidences and prayed for an opportunity to explain before the lower authorities. Contra, the Ld. DR supported the order of the CIT(A).

6. We heard the rival submissions and perused the material on record. Prima-facie the CIT(A) has passed the order considering the fact that there is no appearance in spite of providing adequate opportunity of hearing and the notices were issued. Therefore, the CIT(A) was of the opinion that the assessee is not interested in prosecuting the appeal and dismissed the appeal ex-parte confirming the action of the assessing officer. The Ld. CIT(A) has issued the notices of hearing referred at Page 2 Para 1.3 of the order, but there was no response and thus the Ld.CIT(A) came to a conclusion that the assessee is not interested and decided the appeal based on the information available on record. Whereas the assessee has raised grounds of appeal challenging the additions of the A.O and there could be various reasons for non appearance which cannot be overruled. Therefore, considering the principles of natural justice shall provide one more opportunity of hearing to the assessee to substantiate the case with evidences and information. Accordingly, we set

aside the order of the CIT(A) and remit the entire disputed issues to the file of the CIT(A) to adjudicate afresh and the assessee should be provided adequate opportunity of hearing and shall cooperate in submitting the information for early disposal of the appeal. Accordingly, we allow the grounds of appeal of the assessee for statistical purposes.

7. In the result, the appeal filed by assessee is allowed for statistical purposes.

ITA No. 980/Mum/2023, A.Y 2013-14

8. As the facts and circumstances in this appeal is identical to ITA No 979/Mum/2023, A.Y 2012-13 on the disputed issues (except variance in figures) and the decision rendered in the above paragraphs 6&7 will apply *mutatis mutandis* to this appeal also and we restore the disputed issues to the file of the CIT(A) on the similar directions and allow the grounds of appeal of the assessee for statistical purpose..

9. In the result, the two appeals filed by the assessee are allowed for statistical purpose.

Order pronounced in the open court on 14.06.2023.

Sd/-

Sd/-

(S RIFAUR RAHMAN)
ACCOUNTANT MEMBER

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 14/06/2023

KRK, PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुम्बई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

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आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Asst. Registrar)
आयकर अपीलीय अधिकरण, मुम्बई/ ITAT, Mumbai