

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

BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

**ITA No. 975/Mum/2023
(Assessment Year: 2012-13)**

Basavraj Masanagi And Company, 302, 3 rd Floor, Arenja Arcade, Sect-17, Vashi, Navi Mumbai, Mumbai-400705.	बनाम/ Vs.	CIT (A) / NFAC, AB-621/670, Aayakar Bhavan, Mumbai-400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AACCB5364R		
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)

Assessee by :	Shri.Ganesh Rajgopalan.AR
Revenue by :	Shri.Abhisek Kumar Singh.DR

सुनवाई की तारीख / Date of Hearing	19/06/2023
घोषणा की तारीख /Date of Pronouncement	20/06/2023

आदेश / ORDER

PER PAVAN KUMAR GADALE - JM:

The appeal is filed by the assessee against the order of the National Faceless Appeal Centre (NFAC)/CIT(A), Delhi passed u/s 250 of the Act.

2. At the time of hearing, the Ld.AR of the assessee submitted that there is a delay of 156 days in filing the appeal before the Hon'ble Tribunal and filed an application for condonation of delay. Whereas, the facts mentioned are reasonable and the Ld.DR has no specific objections.

Accordingly, condone the delay and admit the appeal. The assessee has raised the following grounds of appeal:

1. *On the facts and circumstances of the case and in law, the learned Commissioner of Income-tax (Appeals) erred in passing an ex-parte order without giving proper notice of hearing or providing any opportunity for the Appellant to make submissions in its defence.*

2 *On the facts and in the circumstances of the case and in law, the learned Commissioner of Income-tax (Appeals) erred in sustaining the additions made by the Assessing Officer in the assessment proceedings of the Appellant incorrectly under the incorrect PAN (AACCB5364R) even though the Appellant had made repeated applications to him to deactivate the same and informing him that the Appellant-firm was filing its returns and being assessed regularly under the correct PAN (AAJFB4166F).*

3 *On the facts and in the circumstances of the case and in law, the learned Commissioner of Income-tax (Appeals) erred in ignoring the submissions made. by the Appellant before the Assessing Officer that it had filed its return of income for the assessment year under the correct PAN (AAJFB4166F) though the reassessment proceedings were initiated for non-filing of returns under an incorrect PAN (AACCB5364R)*

4. *On the facts and in the circumstances of the case and in law, the learned Commissioner of Income-tax (Appeals) erred in dismissing the appeal on account of non-prosecution without considering the merits of the case*

5. *On the facts and in the circumstances of the case and in law, the learned Commissioner of Income-tax (Appeals) erred in not considering the income-tax returns filed by the Appellant under the correct PAN and making additions under section 69 of the Income-tax Act, 1961 amounting to Rd. 2,53,597/- and section 69A totaling to Rs. 20,37,356/-.*

6. The above grounds of appeal are independent of and without prejudice to each other The Appellant craves leave to add any other ground(s) and/or modify or withdraw any of the above grounds at any time earlier or during the hearing before the Hon'ble ITAT.

3. The brief facts of the case are that, the assessee is a partnership firm and is engaged in the business as approved valuers. Whereas the assessment was reopened by issuing notice u/s 148 of the Act and the reasons recorded are referred at Para 1 of the assessment order. Since the assessee has not filed the return of income for the A.Y 2012-13, the Assessing Officer(A.O) has issued notice u/s 142(1) of the Act and was not complied. Therefore, the AO considering the facts, has issued the show cause notice referred at Para 3 of the order and the assessee has filed/ uploaded the explanations vide letter dated 7-12-2018. Whereas the A.O. was not satisfied with the partial information and invoked the provisions of Sec. 144 of the Act made an addition of Rs. 20,37,356/- as unexplained money U/sec69 of the Act and Rs.2,53,597/- as unexplained investments and assessed the total income of Rs. 22,90,953/- and passed the order u/s 144r.w.s147 of the Act dated 18.12.2019.

4. Aggrieved 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. Aggrieved 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/ uploaded details 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. 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 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, 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. And the grounds of appeal of the assessee are allowed for statistical purposes.

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

Order pronounced in the open court on 20.06.2023.

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 20/06/2023

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.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

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