

IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, MUMBAI
BEFORE SHRI BR BASKARAN, ACCOUNTANT MEMBER &
SHIR PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 492/Mum/2023
(A.Y: 2010-11)

Rashida Vahanvaty, 126/A Kasara St, 3 rd Lane, Darkhana, Reay Road, Mumbai – 400010.	Vs.	ITO, Ward 20(3)(1), Piramal Chambers, Lalbaug, Mumbai-400012.
PAN/GIR No. : AAAPV8553B		
Appellant	..	Respondent

Appellant by :	Mr. Rajesh Athavale.AR
Respondent by :	Ms. Naina K. Kumar.DR

Date of Hearing	20.04.2023
Date of Pronouncement	24.04.2023

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

The assessee has filed the appeal against the order of National Faceless Appeal Centre (NFAC), Delhi / CIT(A) passed u/sec 250 of the Act. The assessee has raised the following grounds of appeal:

- 1. The learned CIT(A) erred in confirming the addition of INR 12,72,493 made on account of bogus purchase under Section 69C as unexplained expenditure.*

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2. *The learned CIT(A) erred in confirming the disallowance of INR 1,68,750 made on account of cash payment for purchasing the machinery under Section 40A(3). The learned CIT(A) erred in not directing the Assessing Officer to delete the said addition as the appellant had not claimed any expenditure in the profit and loss account.*
3. *Each one of the above grounds of appeal is without prejudice to the above.*
4. *The appellant reserves the right to add, alter or amend to the above grounds of appeal.*

2. The brief facts of the case that the assessee is engaged in the business of manufacturing of oil induction wads and lidding foils. The assessee has filed the return of income for the A.Y 2010-11 on 02.10.2010 disclosing a total income of Rs. 5,79,915/- and the return of income was processed u/s 143(1) of the Act. Subsequently, the Assessing Officer (AO) has received the information from the DGIT (Inv) Mumbai that the assessee has obtained bogus purchases as per sales tax department website, from M/s. Anshu Mercantile Pvt Ltd of Rs.1,68,750/- and M/s.Tube India of Rs.12,72,493/-. The AO has

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reason to believe that income has escaped assessment and issued notice u/s 148 of the Act. Further the reasons for reopening of assessment was provided and the assessee has filed the objections. The assessee in response to notice, has filed a letter dated 15-04-2017 to treat the return of income filed on 2-10-2010 as due compliance. Further the A.O. has issued notice U/sec143(2) and U/sec142(1) of the Act and called for the details. The Ld.AR of the assessee appeared from time to time and furnished the details.

3. The A.O to test check the genuineness of the transactions has issued notice u/s 133(6) of the Act on the parties and the notices were returned unserved. The A.O. has called for additional details and the assessee was also issued show cause notice. The assessee has filed the reply but the AO was not satisfied with the explanations and observed that the genuineness of transactions could not be established and made addition of bogus purchase u/s 69C of the Act of Rs.12,72,493/- and disallowance u/s 40A(3) of the Act of Rs.1,68,750/- and assessed the total

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income of Rs.20,21,160/- and passed the order U/sec143(3) r.w.s147 of the Act dated30-11-2019.

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 made in the assessment proceedings. Further the assessee has a good case on merits and shall substantiate with the material evidences. Per 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 3 Para 8 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

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submitting the information for early disposal of the appeal and we allow the grounds of appeal of the assessee for statistical purposes.

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

Order pronounced in the open court on 24.04.2023.

Sd/-
(BR BASKARAN)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 24.04.2023

KRK, PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT (Judicial)
4. The PCIT
5. DR, ITAT, Mumbai
6. Guard File

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आदेशानुसार/ BY ORDER,

(Asst. Registrar)
ITAT, Mumbai