

IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, MUMBAI
BEFORE SHIR PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 169/Mum/2023
(A.Y: 2009-10)

Umashanker R Paliwal, Shop No. 2, Uday Darshan, TPS III, RoadNo.11,Santacruz(E) Mumbai-400055.	Vs.	ACIT, 22(2) Piramal Chambers, Lalbaug, Mumbai-400013.
PAN/GIR No. : AADPP0557G		
Appellant	..	Respondent

Appellant by :	Shri Aditya Maheshwari.AR
Respondent by :	Ms. Jayashree Thakur.DR

Date of Hearing	24.04.2023
Date of Pronouncement	25.04.2023

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

This appeal is filed by the assessee against the order of the National Faceless Appeal Centre (NFAC), Delhi/CIT(A) passed U/sec 143(1) and 250 of the Act. The assessee has raised the following grounds of appeal:

- 1. That on the facts and circumstances of the case, the learned Commissioner of Income-tax (Appeal) erred in upholding action of Income Tax officer of reopening of Appellant case u/s 148 of Income Tax Act, 1961 as assessment was completed u/s 143(3)*

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after considering details and explanation given and no new facts were brought on record for reopening.

2. *That on the facts and circumstances of the case, the learned Commissioner of Income-tax (Appeal) erred in upholding actions of Income Tax officer without considering written submissions and details filed by the AR of assessee on 28th February, 2007.*
3. *That on the facts and circumstances of the case, the learned Commissioner of Income-tax (Appeal) erred in upholding action of Income Tax officer of addition of Rs. 617,446/- being Interest paid to Cholamandal DBS Finance Ltd as TDS was deducted.*
4. *That on the facts and circumstances of the case, the learned Commissioner of Income-tax (Appeal) erred in upholding action of Income Tax officer disallowing Transport charges of Rs. 1,068,074/.*
5. *The appellant craves leave to add further ground or to amend or alter the existing ground on or before the date of hearing*

2. The brief facts of the case are that, the assessee is engaged in the business of processing and trading of milk. The assessee has filed the return of income for the A.Y 2009-10 on 30.09.2009 disclosing a total income of Rs. 8,29,910/- and the case was selected for scrutiny and assessment u/s 143(3) of the Act was

completed on 26.12.2011 determining a total income of Rs.9,20,896/-.

3. Subsequently the AO has received information that the assessee has paid interest of Rs.6,17,446/- on the secured loan to M/s Cholamandalam DBS Finance Ltd and no TDS was deducted and further the assessee has debited of Rs.10,68,074/- in the profit and loss account towards transport charges and no TDS was deducted. Therefore, the AO has reason to believe that the income has escaped assessment and issued notice u/s 148 of the Act. Further the assessee was provided reasons for reassessment and objections were filed. Subsequently, the AO has issued notice u/s 142(1) of the Act calling for the details and submissions. Whereas, the assessee could not explain with the complete details. Finally the AO has made the disallowance u/s 40(a)(ia) of the Act on account of non deduction of TDS on interest of Rs.6,17,446/- and in respect of non deduction of TDS on transportation expenses of Rs 10,66,074/- and assessed the total income of Rs.26,06,416/-and

passed the order u/s 143(3) r.w.s 147 of the Act dated 20-03-2015.

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 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 3 Para 4 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

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opportunity of hearing and shall cooperate in submitting the information for early disposal of the appeal. Accordingly, 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 25.04.2023.

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 25.04.2023

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, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//()

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(Asst. Registrar)
ITAT, Mumbai