

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F" MUMBAI

BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
MS. KAVITHA RAJAGOPAL (JUDICIAL MEMBER)

ITA No. 364/MUM/2022
Assessment Year: 2011-12

Shri Sanjay Chandrakant
Gaonkar
O-270, RBI Staff Quarters,
North Avenue Road,
Santacruz (W), Mumbai- 400054
PAN NO. AIMPG3359C
Appellant

Income Tax Officer 26(1)(2)
Kautilya Bhavan,C-41 to C-43,
Vs. G Block, Bandra Kurla Complex,
Bandra (E), Mumbai- 400051
Respondent

Assessee by : Shri Rahul Hakani
Revenue by : Shri Sunny Mathews, AR

Date of Hearing : 11/07/2023
Date of pronouncement : 17/07/2023

ORDER

PER OM PRAKASH KANT, AM

This appeal by the assessee is directed against the order dated 09.06.2017 passed by the Ld. Commissioner of Income-tax (Appeals) – 46, Mumbai [in short ‘the Ld. CIT(A)’] for assessment year 2011-12, raising grounds as reproduced below:

1) The learned Commissioner of Income Tax (Appeals) has erred in passing the order without providing reasonable opportunity of being heard.

2) The learned CIT (Appeals) has erred in confirming the addition of Rs. 59,46,260/- on account of alleged

unexplained investments as per para 4 of the impugned order. The reasons assigned by him for doing the same are wrong and insufficient. Provisions of the act ought to have been properly construed before doing the same.

3) The learned CIT (Appeals) has erred in confirming the disallowance of Rs. 1,71,478/- a sum of on account of alleged unexplained expenditure as per para 5 of the impugned order. The reasons assigned by him for doing the same are wrong and insufficient. Provisions of the act ought to have been properly construed before doing the same.

4) The learned CIT (Appeals) has erred in confirming an addition of Rs 35,52,805/ on the account of alleged unexplained cash credit by invoking provisions of section 68 of the Income Tax Act, 1961 as per para 6 of the impugned order. The reasons assigned by him for doing the same are wrong and insufficient. Provisions of the act ought to have been properly construed before doing the same.

5) The learned CIT (Appeals) has erred in continuing disallowance of Rs. 2,27,231/- claimed as deduction against the remuneration as per para 7 of the impugned order. Reasons assigned by him for doing the same are wrong and insufficient Provisions of the Act ought to have been properly construed before levying the same.

6) Appellant leaves to add/modify/delete/alter any/all grounds of Appeal.

2. Briefly stated facts of the case are that the assessee filed its return of income for year under consideration on 17.11.2011 declaring total of Rs. 2,24,680/-, The return of income filed by the assessee was selected for scrutiny and notice u/s 143(2) of Income Tax Act, 1961 (in short 'the Act') was issued to the assessee, which partly complied. The assessee is an individual and employee of the

Reserve Bank of India (RBI) and also claimed as partner in firm M/s Shree Swami Samarth Hotel. In the case of assessee, the Assessing officer observed cash deposits in bank accounts maintained with Apna Sahakari Bank and Canara Banak. However, due to failure on the part of assessee in explaining the source of same, the Assessing Officer treated the said cash deposits as unexplained credit/investment of Rs. 59,46,260/-. The Assessing Officer also made disallowance of unexplained expenditure of Rs. 1,71,478/-; disallowance of expenses claimed against remuneration of Rs. 2,27,231/and addition for unexplained credit of Rs. 35,52,805/-. In this manner, the assessment was completed u/s 143(3) of the Act on 28.03.2014 determining the total income at Rs. 1,01,22,450/- Before the Ld. CIT(A), the assessee filed appeal by the delay of 205 days. The Ld. CIT(A) condoned the delay of filing the appeal and issues various notices to the assessee for filling submission however, despite issuing many notices, no compliance was made on the part of the assessee till 28.02.2017. Thereafter, also assessee filed part document and matter was sent to the assessing officer calling for remand report. However, assessee did not appear before the Ld. Assessing Officer during remand proceeding for verification of document filed by the assessee. In view of the no compliance part of the assessee, the Ld. CIT(A) passed the order of the basis of documents available and upheld the addition made by the Assessing officer except samll relief in respect of addition for unexplained expenditure of Rs. 1,71,478/- in the impugned order dated 09.06.2017. Aggrieved with the finding of the Ld. CIT(A), the

assessee in appeal before the Tribunal, which has been filed with delay of more than 1700 days.

3. Before us the Ld. Counsel of the assessee referred to the affidavit of the assessee, wherein he has submitted that though the impugned order of the Ld. CIT(A) was issued on 09.06.2017. However, due to nonpayment of fee of the consultant, he did not cooperate and password of the assessee's account on the Income Tax website was also not provided to the assessee. Thereafter Covid restrictions also delayed in the filling in appeal, which has been ultimately filed on 23.02.2022. In view of the facts submitted by way of affidavit, we find that assessee was prevented in filling the appeal within limitation period due to sufficient cause and therefore in the interest of substantial justice, we feel it appropriate to condone the delay and admit the appeal. Accordingly the appeal is admitted for adjudication.

4. We find that Ld.CIT(A) has passed the order without taking into consideration submission of the assessee. The Ld. CIT(A) has mentioned the details of the notices issued and non compliance part of the assessee in para 5.1 of the impugned order. For ready reference same is reproduced as under:-

5.1 Before I proceed on merits, it is important to bring on record the various opportunities given during the course of appeal proceedings to the assessee to furnish details in support of claim for the grounds raised. The various notices and their compliance are as follows:

Sr.		Date	of	Date	of	Remarks
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No		notice	Hearing	
1.	1 st notice	19.07.2016	12.08.2016	Sought adjournment. Adjourned to 26.08.2016
2.			26.08.2016	Sought adjournment vide letter sent by post.
3.	2 nd notice	19.09.2016	06.10.2016	No one attends.
4.	3 rd notice	18.10.2016	10.11.2016	Sought adjournment. Adjournment to 06.12.2016
5.			06.12.2016	AR attends. No submission made, asked to file details in support. To file details on 15.12.2016.
6.			15.12.2016	Sought adjournment. No details filed.
7.	4 th notice	29.12.2016	06.12.2016	No one attends
8.	The above non compliance was informed in final opportunity vide letter dated 10.02.2017 "Final Opportunity" where the hearing was fixed for 20.02.2017.			
9.	On 20-02-2017, the Authorised Representative requested for short adjournment to compile data which was granted till 24-02-2017			
10.	On 24-02-2017, once again Shri Nilesh Jagiwala, C.A. appeared and sought adjournment which was granted till 27-02-2017			
11.	The case was adjourned to 28-02-2017 on request to file copy of return/ copy of account of firm			
12.	On 28-02-2017, the details were filed in part and requested to be considered. The case was remanded to Assessing Officer with directions u/s.250(4) to carry out verification. The Authorised Representative was directed to appear before Assessing Officer for further verification with books of a/c and audit report and to produce copy of cash / sales. The date of compliance was fixed for 05-03-2017 which was changed to 06-03-2017. The direction			

	<p>issued to Assessing Officer was to examine specific entries and they are to be cross tallied with above documents on ground on which the appeal was filed.</p> <p>Vide e-mail dated 20-03-2017, the Assessing Officer reported as under:</p> <p><i>"As per telephonic talk held with you in the case of Sanjay C. Gaonkar for AY 2012-13, your goodself have apprised that the assessee will file details/documents in one or two days for verification with regard to the Sissues mentioned in your letter dated 01-03-2017. In reply, Shri Nilesh Jagiwala, the AR of the assessee attended on 15-03-2017 but failed to Submit any details/ documents. Accordingly, he requested for further time to submit the requisite details. Accordingly, the case was adjourned to 17-03-2017 at 3.30 p.m. but till date the assessee has failed to submit any details / documents. This is for your kind information."</i></p>
13.	As the assessee had failed to furnish further details for verification, vide letter dated 10-03-2017, the assessee was granted further time till 24-04- 2017. However, none appeared on that date.
14.	On 21-03-2017, the details received were forwarded to Assessing Officer to verify with respect to the books of firm (which the Authorised Representative had to produce).
15.	Vide e-mail dated 07-06-2017, the Assessing Officer once again confirmed that there was no response / reply from the assessee in response to the verification directed by undersigned to be made.

The above sequence of events have been brought on record to illustrate that the assessee was clearly given multiple opportunities to furnish details in support of the grounds raised in appeal and provide evidence for verification once again during appeal proceedings, which were not availed.

5. We find that the Ld. CIT(A) has issued as much as four notices and thereafter issues final opportunity but no effective compliance was made on the part of the assessee. Further on 28.02.2017 the Ld. Authorised Representative of the assessee filed reply, which was forwarded by the Ld. CIT(A) to the Assessing Officer calling for remand report. Consequently, the Assessing Officer called for the assessee for verification of the documents, but again no compliance was made on the part of the assessee and this fact was reported by the Assessing Officer to the Ld. CIT(A). Once again the assessee filed part detail on 10.03.2017, which was forwarded to the Assessing Officer for verification but again no compliance was made by the assessee before the Assessing Officer. In view of the above facts and circumstance, it is evident the assessee has not cooperated before the lower authorities for verification of the it's own documents and claims. Before us the Ld. Counsel of the assessee requested for restoring the matter back to the file of the Ld. CIT(A). In the interest of the substantial justice, we feel it appropriate to restore the issue back to the Ld. CIT(A), however looking to the non compliant conduct of the assessee and total disregard of the proceedings before the Ld. CIT(A), impose cost of Rs. 20,000/-. The assessee is directed to deposit the same into Prime Minister Relief Fund within seven days of receipt of this order. The grounds raised by the assessee are accordingly allowed for statistical purpose. The Ld. CIT(A) is directed to ensure payment of the cost by the assessee before the commencing the appellate proceedings.

6. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open Court on 17/07/2023.

**Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER**

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;

Dated: 17/07/2023

Shubham P. Lohar

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai