

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

BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER

**ITA No.679/M/2023
Assessment Year: 2012-13**

Shri Amber Avinash Talwalkar, Legal heir of Late Smita Avinash Talwalkar, 201, Matoshri Height, D.L. Vaidya Road, Near Shivaji Park, Dadar (West), Mumbai – 400 028 PAN: AABPT3884E	Vs.	National Faceless Appeal Centre (NFAC), Delhi
(Appellant)		(Respondent)

Present for:

Assessee by : None
Revenue by : Mr. Joginder Singh, Sr. A.R.

Date of Hearing : 11 . 07 . 2023
Date of Pronouncement : 25 . 07 . 2023

ORDER

Per : Kuldip Singh, Judicial Member:

The assessee by filing the present appeal, sought to set aside the impugned order dated 05.01.2023 passed by the National Faceless Appeal Centre(NFAC) [Commissioner of Income Tax (Appeals), Delhi] (hereinafter referred to as CIT(A)] qua the assessment year 2012-13 on the grounds inter-alia that :-

“GROUND I:

1. The learned CIT (A) has erred upholding addition of Rs.5,00,000/- under section 41 being difference between amount of unsecured loans shown by appellant and that shown by the loan

creditor under section 133(6) without giving any opportunity to the appellant to reconcile the same in their records.

GROUND II

The Appellant would like to inform you that Late Smt. Smita Avinash Talwalkar was suffering from Cancer since May 2010. Even during the A.Y.2012-13 she was ill and going through very tough treatments of Cancer and chemotherapy. Further after fighting for more than four years against the cancer she got expired on 06/08/2014. It could be further noted that the Assessment Order u/s 143 (3) of the Income Tax Act, 1961 was passed dated 27/02/2015 when the assessee was already passed away. It was very tough and challenging for the assessee and for the legal heir to attend the assessment proceedings, than too the legal heir of the assessee managed any how to attend and comply with the extent possible cooperation during the assessment proceedings. Further whatever demand has been raised as per the above order, it is been raised on account of perception and due to reconciliation of loan amount submitted by the appellant and by the loan creditor. There was no such addition which was made on account of concealment and/or misrepresentation in the return of Income.

The Appellant hereby most humbly request to drop the demand raised on Late Smt. Smita Avinash Talwalkar. The appellant hereby refer the judgement of the Hon'ble Supreme Court in the matter of Shabina Abraham Vs Collector, Customs and Central Excise (2015 SEC Online SC 664), it has been held that the heirs of a deceased assessee cannot be held liable for liabilities incurred by an assessee.”

2. Briefly stated facts necessary for consideration and adjudication of the issues at hand are : assessee's return of income filed for the year under consideration declaring total income at Rs.16,28,610/- was subjected to scrutiny. During the scrutiny proceedings the Assessing Officer (AO) noticed from the balance sheet that the assessee has taken unsecured loan from various parties. The AO issued notice under section 133(6) of the Income Tax Act, 1961 (for short 'the Act') to the aforesaid loan creditors who have filed the necessary information. The AO noticed discrepancies in the information received from the various parties namely Shri Ashok Gawde and Shri Sanjay Bhadale Patil vis-à-vis the balance sheet filed by the assessee to the following effect:

Sr. No.	Name of the loan creditor	Balance shown by the assessee in the Balance Sheet	Balance confirmed by the loan creditor consequent to information called u/s 133(6)	Difference
1	Shri Ashok Gawde	16,00,000/-	15,00,000/-	1,00,000/-
2	Sanjay Bhandale Patil	34,00,000/-	30,00,000/-	4,00,000/-

3. On failure of the assessee to reconcile the discrepancy the AO proceeded to make the addition of Rs.5,00,000/- to the total income of the assessee. The AO has also made another addition which has not been challenged by the assessee. The AO framed the assessment under section 143(3) of the Act.

4. The assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has partly allowed the same. Feeling aggrieved with the impugned order passed by the Ld. CIT(A) the assessee has come up before the Tribunal by way of filing present appeal.

5. Numerous notices were issued to the assessee who has not put in appearance despite service on 09.05.2023. The assessee sent a request addressed to the registry of the Tribunal seeking adjournment which was granted for 11.05.2023, on which date none appeared. Even thereafter none appeared on behalf of the assessee nor the notices issued were received back served/unserved. So it appears that the assessee is not interested in prosecuting the present appeal. So the Bench has decided to dispose of the present appeal on the basis of material available on record and with the assistance of the Ld. D.R. for the Revenue.

6. I have heard the Ld. D.R. for the Revenue, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and case law relied upon.

7. I have perused the impugned order passed by the Ld. CIT(A) who has partly allowed the same by returning following findings:

“5. The above reply of the Appellant has been carefully examined and considered in detail, with reference to the order of the AO. After considering all the facts, grounds of appeal are adjudicated as under:

*Ground of appeal number (i) of the appellant is allowed.
Ground of appeal number (ii) is also allowed.*

5.1 Regarding the ground number (iii), pertaining to addition of Rs.5,00,000/-, the findings of the AO relating to difference in the claim of the appellant and the confirmation filed by the creditor/third party, have not been controverted by the appellant, with proper evidence. Therefore, this addition is upheld and the ground of appeal of the appellant is dismissed in this regard.

5.2 In respect of the fourth and final ground of appeal, it is observed that the dispute is related to TDS claim made by the appellant, to the tune of Rs. 1,53,049/-, the assessing officer is directed in this regard, to verify the claim of the actual eligible TDS of the appellant and as per Form 26AS and as per the receipts and income shown by the appellant in the return of income and Form 26AS and allow the correct eligible claim of TDS of the appellant as per the provisions of the Act and law.”

8. Bare perusal of the aforesaid findings returned by the Ld. CIT(A) shows that a cryptic order has been passed whereby ground No.1 & ground No.2 raised by the assessee qua the addition under section 40(a)(ia) of the Act for non deduction of the tax at source and adhoc disallowance of Rs.3,27,838/- @ 15% of the expenses claimed have been allowed by not recording any reasons rather simply recorded that “ground No.1 & 2 raised by the assessee are allowed.”

9. So far as ground No.3 qua the addition of Rs.5,00,000/- is concerned again the Ld. CIT(A) has not given any reasoning for confirming the addition. From the para 4 of the impugned order it is also noticed that 5 notices reported to have been issued by the Ld. CIT(A) and it is also mentioned that reply filed/uploaded by the assessee on 23.02.2022 and was examined carefully. But there is no reference to any such reply/submissions filed by the assessee. Rather the Ld. CIT(A) has extracted the statement of facts recorded in form No.36.

10. In view of what has been discussed above it is proved that the Ld. CIT(A) has dismissed the appeal without applying his mind on the grounds raised by the assessee. In these circumstances the Bench has no option except to remand the case back to the Ld. CIT(A) to decide afresh after providing adequate opportunity of being heard to the assessee.

12. Resultantly, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 25.07.2023.

**Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

Mumbai, Dated: 25.07.2023.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai

The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.