

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

ITA No. 2760/Mum/2023  
(A.Y: 2014-15)

Md. Sadique Badgujar, 160-168, Ahmed Umer Bldg, 2 <sup>nd</sup> Floor, Block No. 77A, Two Tank Maulana Shaukat Ali Road, Mumbai-400008.	Vs.	ITO, Ward 20(2)(2), Room No.212, Piramal Chamber, Lalbaug, Parel, Mumbai-400012.
PAN/GIR No. : AAIPB6217A		
Appellant	..	Respondent

Assessee by :	None
Revenue by :	Shri G.J. Ninawe, Sr. DR

Date of Hearing	01.01.2023
Date of Pronouncement	03.11.2023

आदेश / O R D E R

**PER PAVAN KUMAR GADALE JM:**

The assessee has filed the appeal against the order of the National Faceless Appeal Centre(NFAC), Delhi / CIT(A) passed u/sec 144 and U/sec 250 of the Ac. The assessee has raised the following grounds of appeal:

1) *1Failure of natural Justice- san Merits*

*i) The IdCIT(A) erred in passing the Order Ex-parte on the failure of equity and justice in spite of fact that the Appellant. had uploaded his submission and paper Books before the lapse of due date for hearing therefore the Order Impugned may be*

*vacated and the same restored to the Assessing Officer should be*

*2. Technical Point- Notice u/s. 143(3) not served*

*The Ld. CIT(A) erred not appreciating that the Assessing Officer had acquired jurisdiction without issuing and serving a valid notice u/s 143(2) therefore the impugned order may be quashed for want of proper jurisdiction*

*3Merits*

*Ad-hoc Addition (@ 10%) on gross contractual receipt Rs.16,55,069/-*

*(a) The Ld.CIT(A) erred in confirming the summary addition without appreciating that these receipts were all backed by evidences which were in fact subject to TDS which was Tax Audited and paid taxes after claiming attributable expenses; therefore taxing summarily further amounts to double addition of the same receipts which may be deleted*

*(b) Without prejudice to the above having accepted the books of account u/s.145 the ad-hoc addition is uncalled for and the addition may be deleted.*

*1. Levy of Penal Interest u/s. 234B and 234C*

*The Appellant on merits denies his liability to penal interest*

*2. The Appellant craves leave to add amend or alter all or any of the above Grounds of Appeal:*

2. The brief facts of the case that, the assessee has filed the return of income for the A.Y 2014-15 on 30.09.2015 disclosing a total income of Rs. 9,77,300/-. Subsequently

the case was selected for limited scrutiny under the CASS and notice u/sec 143(2) and U/sec 142(1) of the Act are issued and there was no compliance to the notices and also adequate opportunity of hearings were provided. Whereas the AO found that the assessee has not complied with the notices neither has filed any submissions on the disputed issues. Therefore the Assessing Officer (A.O) based on the information available on record has made best judgment assessment. Whereas the AO has dealt on the facts that the assessee has contract receipts of Rs.1,65,50,690/-, since the assessee has not furnished any documentary evidence, the AO has disallowed @10% of the total contract receipts which worked out to Rs.16,55,069/- and assessed the total income of Rs.26,32,370/- and passed the order u/sec 143(3) of the Act dated 08.12.2016.

3. 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.

4. Heard the Ld. DR 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 on 20-01-2021,02-02-2023,10-02-2023,21-02-2023,06-03-2023,13-04-2023,29-05-2023 referred at Page 2 Para 6 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 with 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

- 5 -

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. Accordingly, allow the grounds of appeal of the assessee for statistical purposes.

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

Order pronounced in the open court on 03.11.2023.

Sd/-  
(PAVAN KUMAR GADALE)  
**JUDICIAL MEMBER**

Mumbai, Dated 03.11.2023

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

*ITA No. 2760/Mum/2023*  
*Md. Sadique Budgujar, Mumbai.*

**- 6 -**

( Asst. Registrar )  
ITAT, Mumbai