

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

ITA No. 2877/Mum/2023
(A.Y: 2017-18)

BharatkumarLalchandJain Flat No. 302, Darshil Apartment, 22 Bhraman Ali, Bhiwandi -421302, Maharashtra.	Vs.	ITO, Ward 1(1), Moham Plaza, Khadak Pada, Kalyan-421301.
PAN/GIR No. : AEBPJ6817K		
Appellant	..	Respondent

Assessee by :	None
Revenue by :	Shri S.G.Menon.Sr.DR

Date of Hearing	07.11.2023
Date of Pronouncement	09.11.2023

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 143(3) and U/sec 250 of the Ac. The assessee has raised the following grounds of appeal:

1. *On the fact in the circumstance of the case and the in law, the learned CIT (A) erred in confirming the Learned Assessing Officer stand of assessment u/s 143 (3) of Income Tax Act 1961.*
2. *On the fact the Ld. CIT (A) National Faceless Appeal Central passing the order without providing proper opportunity of hearing to the appellant.*

3. *On the facts in the circumstances of the case in the law, The Learned CIT(A) erred in confirming the Learner Assessing Officer stand for the addition made, on account of as unexplained Money u/s 69A of Income Tax Act 1961 has made addition of Rs 29,65,594/-*

4. *On the facts in the circumstances of the case The Learned AO did not accept, Balance Sheet of Individual and Firm Balance Sheet during Assessment proceeding*

5. *On the facts in the circumstances of the case The Learned AO not allow cash in hand declared in ITR AY 2016/17.*

6. *That the Assessing Officer erred in making addition u/s 69A of the Act in the case of the appellant without appreciating that provisions of Section 69A are not applicable in the facts and circumstances of the case since the Appellant has already accounted for income represented by cash deposited in the bank and therefore, same cannot be considered to be unexplained income in terms of Section 69A of the Act*

7. *The appellant craves leave to add, alter, modify, delete any ground or grounds of appeal either before or during the course of hearing of the appeal.*

The appellant prays this Hon'ble Tribunal to delete the disallowance made by the ld.AO, which is confirmed by the ld CIT(A).

2. The brief facts of the case are that, the assessee has filed the return of income for the A.Y 2017-18 on 31.03.2018 disclosing a total income of Rs. 14,27,330/- and the return of income was processed u/s 143(1) of the Act. Subsequently the case was selected for limited scrutiny

under CASS reasons being “Cash deposit during the year” and notice u/sec 143(2) and U/sec 142(1) of the Act along with questionnaire are issued. In compliance to the notices, the assessee has filed the reply through ITBA system and Tapal. The assessee during the F.Y.2016-17 has made aggregate cash deposits of Rs.1,46,45,500/-. The assessee was asked to explain the sources of cash deposits made in the bank account and was issued show cause notice dated 11.12.2019 referred at Para 3 of the assessment order. In compliance to show cause notice, the assessee has filed the detailed explanations substantiating the sources and supporting details referred at Para 4 of the assessment order. The Assessing Officer (AO) has dealt on the transaction of cash in hand, withdrawals, investments, recoveries and payments at Para 5.2 to 5.6 of the order. Finally the A.O was not satisfied with the explanations on the sources of cash deposits to the extent of Rs. 29,65,594/-and made addition u/sec 69A of the Act and has assessed the total income of Rs.43,92,924/- and passed the order u/sec 143(3) of the Act dated 26.12.2019.

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 22-01-2021, 5-07-2023 and 24-07-2023 referred at Page 5 Para 4.1 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 addition u/sec69A of the act by 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 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 09.11.2023.

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 09.11.2023

KRK, PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT (Judicial)

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Bharatkumar Lalchand Jain, Mumbai.

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4. The PCIT
5. DR, ITAT, Mumbai
6. Guard File

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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(Asst. Registrar)
ITAT, Mumbai.