

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

ITA No. 2575/Mum/2023  
(A.Y: 2012-13)

Mr. Shiv Kumar Velan, 3/ 4 Shinde Bldg, Pestom, Sagar Road No 3, Chembur, Mumbai-400089.	Vs.	ITO, Ward 27(3)(3), Mumbai.
PAN/GIR No. : ABVPV6559M		
Appellant	..	Respondent

Assessee by :	Shri.AjaySingh&AkshayPawar.AR
Revenue by :	Shri G.J. Ninawe, Sr. DR

Date of Hearing	31.10.2023
Date of Pronouncement	31.10.2023

आदेश / O R D E R

**PER PAVAN KUMAR GADALE JM:**

The appeal is filed by the assessee against the order of the National Faceless Appeal Centre (NFAC)Delhi / CIT(A) passed u/s 143(3) and U/sec250 of the Ac. The assessee has raised the following grounds of appeal:

*1 That on the facts and in the circumstances of the case Ld CIT(A) erred in deciding the appeal ex-parte without appreciating that the notice was issued on the portal and the same was followed up by erstwhile Chartered Accountant as the Appellant is not well versed with Computer and IT portal access.*

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2. That on the facts and in the circumstances of the case Ld CIT(A) erred in deciding the appeal ex-parte without providing reasonable, adequate and effective opportunities o hearing to the appellant.

3. That on the facts and in the circumstances of the case. Ld. CIT(A) erred in confirming the action of the Ld Assessing Officer in making an addition of Rs. 12.15,921/- being 10 percent of Diesel and Petrol expenses paid on adhoc basis without considering facto the case that the figures are not relatable. The Ld. A.O. has on an adhoc basis on surmises and conjecture disallowed arbitrarily Rs12,15,921/-

4 That on the facts and in the circumstances of the case Ld CIT(A) erred in confirming the action of the Ld. Assessing Officer in disallowing bad debt of Rs. 2.478/- without considering the fact of the case.

5. That on the facts and in the circumstances of the case, Ld CIT(A) erred in confirming the action of the Ld. Assessing Officer in disallowing credit card interest and la payment fees amounting to Rs. 1,55,690/- and Rs. 4,83.773/- without considering the fact of the case.

6 That on the facts and in the circumstances of the case, Ld. CIT(A) erred in confirming the action of the Ld. Assessing Officer in disallowing a sum of Rs. 1.37,322/- being Lo documentation and processing fees without proceeding facto of the case.

7 That on the facts and in the circumstances of the case, Ld. CIT(A) erred in confirming the action of the Ld. Assessing Officer in making an addition of Rs. 12,25,000/- unexplained Income without considering the fact of the case.

8 On the facts and in the circumstances of the case, Ld. Assessing Officer and Ld. CIT has erred in not granting the

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*opportunity to produce evidence in respect of expenses which were disallowed and the unsecured loan to the parties..*

2. The brief facts of the case are that, the assessee is engaged in the business of plying of vehicles on rental basis. The assessee has filed the return of income for the A.Y 2011-12 on 28.09.2012 disclosing a total income of Rs. 10,84,760/- and the return of income was processed u/s 143(1) of the Act. Subsequently the case was selected for scrutiny and notice u/sec 143(2) and U/sec142(1) of the Act are issued. In compliance to the notice the Ld. AR of the assessee appeared from time to time and submitted the details and the case was discussed. The AO on perusal of the profit and loss account found that the assessee has claimed various expenditures and they are not fully supported with the bills, vouchers and evidences and the adhoc disallowances. Similarly in respect loan from two parties aggregating to Rs.12,25,000/-, the assessee could not produced PAN,ITR and address of the parties and the said sum was treated as undisclosed income. Finally the AO has made disallowances of following expenses and the loan amount of Rs.12,25,000/- as under:

1.	Diesel and Petrol Exp	Rs. 12,51,921/-
2.	Bad Debt	Rs. 2,478/-

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3.	Credit Card int. & Penalty	Rs. 1,55,690/-
4.	Credit Card Int. & Late Payment Fee	Rs. 4,83,773/-
5.	Loan Documentation & Processing Fees.	Rs, 1,37,322/-

3. The AO has assessed the total income of Rs. 43,04,944/- and passed the order u/sec 143(3) of the Act dated 30.03.2015.

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 on 24-12-2020,12-04-2021,04-08-2021,9-03-2022&22-03-2023 referred at Page 3 Para 2 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 of the CIT(A)

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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.

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

Order pronounced in the open court on 31.10.2023.

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

Mumbai, Dated 31.10.2023

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. 2575/Mum/2023*  
*Shivkumar Velan, Mumbai.*

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**( Asst. Registrar)**  
ITAT, Mumbai