

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, MUMBAI**

**BEFORE SHRI PAVAN KUMAR GADALE, JM &
MS PADMAVATHY S, AM**

**I.T.A. No. 2756/Mum/2023
(Assessment Year: 2015-16)**

M/s Sterling Martek I Private Ltd. 308, Parimal CHS Ltd, R.B. Mehta Marg, Ghatkopar East, Mumbai-400077. PAN :AAMHS9553G.	Vs.	ITO Ward-14(3)(4) Aayakar Bhavan, M.K. Road, Mumbai-400051.
Appellant)	:	Respondent)

Appellant/Assessee by : Shri Narendra Kamdar, AR
Revenue/Respondent by : Shri Joginder Singh, Sr. DR

Date of Hearing : 15.11.2023
Date of Pronouncement : 20.11.2023

ORDER

Per Padmavathy S, AM:

This appeal is against the order of Commissioner of Income Tax (Appeals)-22 / National Faceless Appeal Centre, Delhi (for short 'CIT(A)' dated 06.06.2023 for Assessment Year (AY) 2015-16.

2. The assessee is engaged in the business of contract work. For the AY 2015-16 the assessee filed the return of income on 31.10.2015 declaring a loss of

Rs. 25,05,699/-. The case was selected for scrutiny. The Assessing Officer (AO) issued notices to the assessee calling for various details. However, the assessee did not file any details called for by the AO. Accordingly, the AO completed the assessment under section 144 r.w.s. 143(3) of the Income Tax Act, 1961 by making an addition of Rs. 3,69,723/- being 10% of the turnover as per Form-26AS.

3. Aggrieved, the assessee filed appeal before the CIT(A). Even before the CIT(A) the assessee neither responded to the notices nor filed any details. The CIT(A), therefore, upheld the addition made by the AO. Aggrieved assessee is an appeal before the Tribunal.

4. The Ld. Authorized Representative (AR) before us submitted that the assessee could not file the details before the CIT(A) for the reason that the AR who was appointed to appear before the CIT(A) passed away due to Covid-19 and that the assessee could not appoint new counsel immediately. The ld. AR therefore, prayed for one final opportunity to represent the case before the lower authority.

5. The ld. Departmental Representative (DR) on the other hand vehemently argued that the assessee is regularly defaulting in making appearance and filing details as can be seen from the records that the assessee did not appear even before the AO. Therefore, the ld. DR submitted that the addition made by the AO be sustained.

6. We have heard the parties and perused the material on record. We noticed that the AO completed the assessment under section 144 r.w.s. 143(3) of the Act since the assessee did not file any details as called for by him. The AO

made an addition of 10% on the total turnover of Rs. 36,97,231/- as per Form-26AS. During the appellate proceedings, the CIT(A) has issued 9 notices from January 2021 to May 2023 to the assessee and none of these notices have been responded by the assessee. The CIT(A) based on the details available on record had confirmed the addition made by the AO and gave relief to the assessee on the plea for credit of TDS. We noticed that the assessee has claimed a loss of Rs. 25,05,699/- against the turnover of Rs. 36,69,723/-. It is also noticed that the lower authorities have called for details and evidences in support of the claim of such a huge loss. In our considered view the claim of such a huge loss against the turnover needs factual verification and in the interest of natural justice and fair play, we are giving one final opportunity to the assessee. We, accordingly, remit the issue back to the CIT(A) with a direction to consider the issue afresh by calling for relevant details as may be required. The assessee is directed to submit the details and co-operate with the proceedings without seeking any adjournments.

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

Order pronounced in the open court on 20-11-2023.

Sd/-
(PAVAN KUMAR GADALE)
Judicial Member

Sd/-
(MS. PADMAVATHY S)
Accountant Member

**SK, Sr. PS*

Copy of the Order forwarded to :

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

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai