

IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, MUMBAI
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &
MS. PADMAVATHY S, ACCOUNTANT MEMBER

ITA No. 2807/Mum/2023
(A.Y: 2013-14)

Ghanshyam Sagarmal Modi,701, Plot No. 57, Premsagar Sawastik Society, Cross Road- 3, Vile Parle (W) Mumbai-400056.	Vs	ACIT, Circle 25(2), Kautilya Bhavan, BKC, Bandra, Mumbai-400051.
PAN/GIR No. : ADIPM8317M		
Appellant	..	Respondent

Assessee by :	Shri.Pratik Jain.AR
Revenue by :	Shri.Joginder Singh. Sr.DR

Date of Hearing	15.11.2023
Date of Pronouncement	20.11.2023

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/sec143(3) and U/sec250 of the Act.The assessee has raised the following grounds of appeal:

- 1. On the facts and circumstances of the Appellant's case and in law the Ld CIT(A) erred in passing an ex-parte order without providing an adequate opportunity of being heard to the appellant*

2. On the facts and circumstances of the Appellant's case and in law, the Id. CIT(A) erred in confirming the action of Ld AO in making addition of Rs. 14,49,440/- under the head Income from House Property by estimating minimum average rental value of flat nos. 401,501 and 601 as per para 5.1 of the impugned assessment order.

3. On the facts and circumstances of the Appellant's case and in law, the Id. CIT(A) erred in confirming the action of Ld AO in making an addition of Rs. 88,560/- under the head Income from House Property by estimating minimum average rental value for Swastik Plaza Shop as per Para 5.2 of the impugned assessment order

4. On the facts and circumstances of the Appellant's case and in law, the Id. CIT(A) erred in confirming the action of Id. AO in disallowing the sum of Rs. 21,380/- on ad-hoc basis being 10% of the total expenditure of Rs. 2,13,801/- as per para 6 of the impugned assessment order

5. The appellant craves leave to alter amend withdraw or substitute any ground or grounds or to add any new ground or grounds of appeal on or before the hearings

2. The brief facts of the case are that, the assessee is an individual and derives income from house property, business, capital gains and income from other sources. The assessee has filed the return of income for the A.Y 2013-14 on 28.09.2013 disclosing a total income of Rs. 24,28,170/- and the return of income was processed u/sec 143(1) of the Act. Subsequently the case was selected for scrutiny under CASS and notice u/sec 143(2) and U/sec 142(1) of the Act

along with questionnaire 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 Assessing Officer (AO) on perusal of the financial statements and computation of income found that the assessee has received the rent from various tenants and has not disclosed the complete information. The A.O dealt on the facts and information at Para 5 & 5.2 of the order and has calculated the income from house property in respect of the flat Nos. 401, 501 & 601 aggregated to Rs.10,14,608/- and Annual rental value of shop of Rs.61,980/-.Further the AO found that the assessee has claimed expenditure under various heads in the profit and loss account and these expenses are not properly supported by the vouchers/bills and the A.O has estimated the disallowance@10% of the claim, which works out to Rs. 21,380/-.Finally the AO has assessed the total income of Rs.35,25,850/- and passed the order u/sec 143(3) of the Act dated 14.03.2016.

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. 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).

5. We 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 after seeking adjournment by the assessee in spite of providing adequate opportunity of hearing. Therefore, the CIT(A) was of the opinion that the assessee is not interested in prosecuting the appeal and decided the appeal based on the information available on record and dismissed the appeal. The Ld.AR submissions are that the assessee was in the

process of collecting the information and the non appearance before the appellate authority is not a wanton act. 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) 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. And we allow the grounds of appeal of the assessee for statistical purposes.

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

Order pronounced in the open court on 20.11.2023

Sd/-
(PADMAVATHY S)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 20.11.2023

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

सत्यापित प्रति //True Copy//

1.

आदेशानुसार/ BY ORDER,

(Asst. Registrar)
ITAT, Mumbai