

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH : BANGALORE**

**BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT AND
SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER**

ITA No.971/Bang/2023
Assessment Year : 2019-20

M/s. Ganesh Jewellers, #32, Nrupathunga Road, Chanagiri, Davangere – 572 131. PAN : AA EFG 5018 Q	Vs.	DCIT, Central Circle – 1(2), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri. Siddesh N. Gaddi, CA
Revenue by	:	Shri. Ganesh R. Ghale, Standing Counsel.

Date of hearing	:	08.01.2024
Date of Pronouncement	:	10.01.2024

ORDER

Per George George K, Vice President:

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 28.09.2023, passed under section 250 of the Income Tax Act, 1961 (hereinafter called 'the Act'). The relevant Assessment Year is 2019-20.

2. Brief facts of the case are as follows:

Assessee is a partnership firm. For the Assessment Year 2019-20, assessee filed return of income under section 139(4) of the Act declaring loss of Rs.46,554/-. There was a search proceeding in the case of the assessee on 29.01.2019 in connection with search conducted in the premises of M/s. Ganesh Jewellers and Shri. Ganesh Raykar. The AO issued notice under section 142 of the Act. Since there was no response to several notices issued under section 142(1)

of the Act calling for information / documents, assessment was completed ex-parte under section 144 of the Act vide order dated 11.08.2021. In the said Assessment Order, the AO made an addition of Rs.12,67,000/- under section 69 of the Act as unexplained investment and a sum of Rs.14,50,000/- under section 69A as unexplained cash.

3. Aggrieved, assessee filed appeal before the First Appellate Authority (FAA). Before the FAA, an elaborate submission was made by the assessee. The CIT(A), however, rejected the contentions of the assessee by observing that submissions have not been filed before the AO and that there is no retraction of the statement on the basis of which additions have been made.

4. Aggrieved by the Order of the CIT(A), assessee has filed the present appeal before the Tribunal. Assessee has filed a Paper Book enclosing therein the case laws relied on, written submissions filed before the CIT(A), panchanama drawn during the course of search, statement recorded, etc.

5. The learned standing Counsel supported the orders of the AO and the CIT(A).

6. We have heard the rival submissions and perused the material on record. Ground Nos.1 and 2 are general in nature and no specific adjudication is required; hence, same are rejected. The learned AR for the assessee has not pressed Ground 3. Hence, ground No. 3 is dismissed.

7. Grounds 4 and 5 are with regard to double taxation. The learned AR has submitted that the additions have been made to the returned income merely on the basis of statements recorded during the course (and post-search) of the search

proceedings. It is the submission of the assessee that income has to be assessed in the correct hands and for the correct Assessment Year. By referring to the Paper Book containing returns filed under sections 139(1) / 139(4) of the Act, as well as returns filed under section 153A of the Act by the assessee firm and its partner (Mr. Ganesh Raykar - AHNPG6686N), the learned AR submitted that all the activities have been predominantly carried on by the partner (Mr. Ganesh Raykar) in his individual capacity and therefore the subject income that has resulted in additions should be the subject matter of assessment in the said partner's hands.

8. We note that the assessee has not made any representation before the AO though extensive representations were made during the course of assessment proceedings in the case of the partner of the firm whose matter was pending before the him. The learned AR claimed that the non-prosecution was due to miscommunication and COVID-related factors (the date of the impugned assessment order being 11.08.2021). The CIT(A) has rejected the contentions of the assessee by stating that the submissions have not been filed before the AO and that there is no retraction of the statements on the basis of which addition has been made.

9. In the interest of justice and equity, we are of the view that assessee deserves an opportunity to be heard before the AO considering the claim of double taxation and also considering that the assessment order is ex-parte. We, therefore, allow the grounds on statistical basis by remitting the matter back to the file of the AO for a fresh adjudication. It is ordered accordingly.

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

Pronounced in the open court on the date mentioned on the caption page.

Sd/-

(CHANDA POOJARI)
Accountant Member

Sd/-

(GEORGE GEORGE K)
Vice President

Bangalore.

Dated: 10.01.2024.

/NS/*

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| 1. Appellants | 2. Respondent |
| 3. DRP | 4. CIT |
| 5. CIT(A) | 6. DR, ITAT, Bangalore. |
| 7. Guard file | |

By order

Assistant Registrar,
ITAT, Bangalore.