

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

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER &
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No.3274/Mum/2023
(A.Y. 2011-12)**

Narendra Sohanrajji Shah 941, Haines Road, Khatav Mill Main Gate, Byculla West, Maharashtra 400027	Vs.	Income Tax Officer- 20(2)(4) 220, 2 nd Floor, Piramal Chambers, Parel, Mumbai – 400012
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: BEDPS4443H		
Appellant	..	Respondent

Appellant by :	Dhaval Shah
Respondent by :	Lieder Panicker

Date of Hearing	27.12.2023
Date of Pronouncement	01.01.2024

आदेश / O R D E R

Per Amarjit Singh (AM):

This appeal filed by the assessee is directed against the order passed by the Id. CIT(A) NFAC, dated 21.07.2023 for A.Y. 2011-13. The assessee has raised the following grounds before us:

- “1. Hence it is against the provision of IT Act.*
- 2. Hence impugned order dated 31 Nov 2018 is b ad in law liable to be upheld and or set aside in to without remand The known issue of No tice u/s 143(2) of the act cannot be cured by reasoning to deeming fiction of section 292BB of the Act on the ground that the assessee has cooperated in the assessment proceeding as held in case Sanjeev Agrawal vs DCIT 70 taxman com 265 Chandigarh Tribunal.*
- 3. Addition of 100 PERCENT purchases of Rs.37,76,235 is arbitrary tribe vindictive with bias mind based on assumption and presumption*

conjectures and surmises as on defects were found in the details submitted by me and identification of said vendors were registered under the M VAT Act 2002 This registered declares as the time pf purchases the same may be deleted or may be reduced to token amount considering the facts of the case.

4. *I craves the liberty to add to amend to change and to delete any grounds of appeal on or before hearing of the appeal.”*

2. Fact in brief is that return of income declaring total income at Rs.1,98,035/- was filed on 24.09.2011. The case was reopened by issuing of notice u/s 148 of the Act on 29.03.2018 on the basis of information received from the Investigation Wing, Mumbai that assessee had received accommodation entries of unsecured loan from hawala entry provider. The AO stated that adequate opportunities were granted to the assessee, however, the assessee had failed to prove the genuineness of the loan transactions. Consequently, the assessing officer has added the amount of unsecured loan obtained by the assessee by treating the same as hawala transaction of Rs.37,76,235/- u/s 69C to the total income that assessee.

3. The assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee on the ground that assessee has not made any compliance to the notices issued by the ld. CIT(A) during the course of appellate proceedings before us.

4. During the course of appellate proceedings before us, the ld. Counsel submitted that the ld. CIT(A) has not issued notices for hearing to the correct e-mail address provided by the assessee. In support of his contention that notices of hearing were issued at the incorrect e-mail id the ld. Counsel submitted a copy of screenshot taken by the assessee from the Income tax portal. Showing notice issued on wrong e-mailed. Because of aforesaid anomaly the ld. Counsel submitted that the assessee be given another opportunity at the level of CIT(A) for deciding the case on merit.

On the other hand, the ld. D.R supported the order of lower authorities.

5. Heard both the sides and perused the material on record. Without reiterating the facts as discussed above the ld. CIT(A) has passed ex-parte order under Sec. 250 of the Act on the ground that assessee has failed to make any response during the course of appellate proceeding to the notices of hearing issued by the ld. CIT(A). However, before us the ld. Counsel asserted that notice of hearing at the appellate stage were not issued on the correct e-mail id provided by the assessee. To buttress his contention the ld. Counsel also submitted copy of screenshot from Income Tax Portal with reference to issue of Notice by the ld. CIT(A) dated 23.06.2023. In this regard, we have perused the copy of Form No. 35 filed by the assessee before the ld. CIT(A) wherein E-mail address was given as under:

“millennium_metal@yahoo.com”

We have also perused the copy of screenshot from the Income Tax Portal w.r.t issue of notice by ld. CIT(A) dated 23.06.2023 which demonstrate the ld. CIT(A) has issued notice of hearing to the assessee on the following e-mail address:

“beesuassociates@yahoo.co.in”

In view of the facts and material placed on record we found that notice of hearing was not issued on the correct e-mail address given/updated by the assessee in the income tax portal and provided in form no. 35. Therefore, the assessee could not make compliance at the time of appellate proceedings before the ld. CIT(A). In view of the aforesaid infirmity we restore this case to the file of the ld. CIT(A) for deciding afresh after affording opportunity of hearing to the assessee as provided u/s 250(6) of the Act. The ld. CIT(A) is requested to take on record the

correct e-mail id given by the assessee for the purpose of making communication relating to appellate proceedings. The assessee is also directed to make compliance before the appellate authority without any failure. Therefore, the appeal of the assessee is allowed for statistical purpose.

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

Order pronounced in the open court on 01.01.2024

Sd/-
(Rahul Chaudhary)
Judicial Member

Sd/-
(Amarjit Singh)
Accountant Member

Place: Mumbai

Date 01.01.2024

Rohit: PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.