

IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, MUMBAI
BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER &
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER

ITA No.3204/Mum/2023
(A.Y. 2010-11)

Mahendra Ravindra Salunkhe, A-202, Swarganaga CHS Ltd, Plot No.62, Sector 18, Kamothe, Panvel City, Raigarh- 410209	Vs.	Income Tax Officer 35(2)(3) Kautilya Bhavan BKC, 400050 Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No:BKFPS6678L		
Appellant	..	Respondent

Appellant by :	None
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 11.07.2023 for A.Y. 2012-13. The assessee has raised the following grounds before us:

- In the appeal the assessee had stated that he had the total income of Rs.2,26,652. The Commissioner of Income Tax (Appeals) had given the assessee an opportunity to hear, firstly in the year of 2021 however due to second wave of Covid 19 he was not able to attend the same as during the concerned period survival was the only challenge. Later, the concerned assessee in the year 2023 was diagnosed with medical illness which impaired his physical inability and mental stability to attend the hearings. The order was dismissed by the Commissioner of Income Tax Appeals by passing an order under section 250 of the Income Tax Act, 1961 dated 11/07/2023. The notices received from the CIT Appeals did not contain any specific information to be submitted due to which the assessee was under the presumption that they will ask additional questions in the next notice.*

The appellant craves leave to add, amend, alter or delete the said ground of appeal.”

2. Fact in brief is that the assessee has not filed return of income therefore the case of the assessee was reopened by issuing of notice u/s 148 of the Act on the basis of CIB/26AS information that the assessee has made trading in National/Multi Commodity exchange contract of Rs.32,21,18,660/- for sale and purchase in the exchange and the assessee has also earned commission or Brokerage on which TDS has been made (Section 194H) during the F.Y. 2011-12. During the course of assessment proceedings the assessee has not made any compliance, therefore, the assessing officer has treated 1% of F & O activity carried out by the assessee during the year to the amount of Rs.32,21,187/- i.e 1% of total turnover Rs.32,21,18,660/- as income of the assessee and added to the total income under the head speculation business u/s 43(5) of the Act. Further the assessing officer has also estimated commission and brokerage earned by the assessee to the amount of Rs.78,846/- and added to the total income of the 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.

4. Heard the ld. D.R and perused the material on record. In the year 2021 because of covid period the assessee could not made any compliance. However, during the March 2023 to June 2023 the ld. CIT(A) has issued notices which assessee could not made compliance because of medical illness which impaired his physical inability and mental stability.

The ld. D.R supported the order of lower authorities.

5. The ld. CIT(A) has mentioned at para 8 of the appeal order that in case the assessee fail to make compliance then the ld. CIT(A) has to decide the appeal on merit on the basis of material available on record.

However, on perusal of the material on record and order of the Id. CIT(A) it is evident that except mentioning provisions of Section 250(6), the Id. CIT(A) has not adjudicated the appeal on merits but simply dismissed for want of non-prosecution. Section 250(6) contemplates that the Id. CIT(A) would determine points in dispute and therefore record reasons on such points in support of his contention however in the case of the assessee the Id. CIT(A) has not determined those points and the detailed findings. Therefore, we restore this case to the file of the Id. CIT(A) for deciding de novo on merit as contemplate u/s 250(6) of the Act after affording more opportunity to the assessee. The assessee is also directed to make compliance before the Id. CIT(A) without any failure, therefore, the appeal of the assessee is allowed for statistical purpose.

6. In the result, the appeal filed by 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.