

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "D" MUMBAI

BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI SANDEEP SINGH KARHAIL (JUDICIAL MEMBER)

ITA No. 3643, 3657, 3656, 3642 & 3641/MUM/2023
Assessment Year: 2011-12, 2012-13, 2013-14 & 2016-17

Mr. Ramesh Madan Patel,
14/A, Sahakar Nagar, Saibaba
Nagar, 1st floor, Chembur
Ground, Shell Colony Road,
Chembur East-400071.

PAN NO. ALQPP 8241 H
Appellant

Vs.

Income Tax Department,
Old CGO Annxe Building,
Maharshi Karve Road, New
Marine Lines,
Mumbai-400020.

Respondent

Assessee by : Ms. Priyanka Kashilkar
Revenue by : Smt. Mahita Nair, Sr. DR

Date of Hearing : 21/02/2024
Date of pronouncement : 21/02/2024

ORDER

PER BENCH

These appeals by the assessee are directed against separate orders passed by the Ld. Commissioner of Income-tax (Appeals)-National Faceless Appeal Centre, Delhi [in short 'the Ld. CIT(A)'] for assessment year 2011-12, 2012-13, 2013-14 and 2016-17 respectively. In these appeals, common issue in dispute are involved and therefore, same were heard together and disposed off by way of this consolidated order for convenience and avoid repetition of facts.



2. At the outset, the Ld. counsel for the assessee submitted that the Ld. CIT(A) has passed the impugned orders *ex-parte* qua the assessee without taking into consideration submission of the assessee on various grounds raised. She submitted that during the period of appeal before the Ld. CIT(A), the assessee was in jail in relation to some criminal proceedings initiated against him and therefore, he could not produce the books of accounts and other documents before the lower authorities, which resulted in *ex-parte* order by the Assessing Officer as well as by the Ld. CIT(A). The Ld counsel requested that one more opportunity should be provided to the assessee to represent before the lower authorities.

3. We have heard rival submission of the parties and perused the relevant material on record. We find that the Ld. CIT(A) has issued various notices on the e-mail ID provided on the income-tax portal. However, it was submitted by the assessee that due to certain restrictions/prohibitions imposed for entry in properties where books of accounts were kept and the assessee being in jail , could not produce the relevant documents to substantiate its claim. The Ld. CIT(A) after considering the submission the assessee dismissed the appeal *ex-parte* in all the assessment years. For ready reference, the finding of the Ld. CIT(A) in the assessment year 2011-12 is reproduced as under:

“7.3 Firstly, it is noticed that the order of Hon'ble High Court of Bombay has not, per se, created any embargo on the appellant to reach out to the documents which are allegedly kept in the disputed premises at No. 87, Krishna Building, Opp. HP Petrol Pump, SV Road,



Old Khar, Mumbai. No evidence is brought on record that the records/documents required for assessment proceedings and appellant proceedings for the year under consideration, were kept in the said premises. Under the circumstances, the appellant's contention of him illegally getting evacuated and him not able to get hold of the documents is devoid of merits. Therefore, the appellant's argument that the documents pertaining to the scrutiny assessment were out of reach due to some dispute are devoid of merit and there is no documentary evidence to show that the appellant genuinely suffered from circumstances beyond his control which prevented him from furnishing books of accounts or any other documentary evidences in support of his claim. It is also noticed that no evidence regarding the appellant's prayer to Hon'ble High Court for obtaining documents/copies of documents claimed to be at the said premises is submitted before this appellate authority. In the absence of substantiating evidence supporting the ground of appeal, Ground No.2 is not tenable and the same is dismissed.”

3.1 Further in assessment year 2011-12, the Ld. CIT(A) dismissed the ground raised as under:

“8.1. It is seen from the records that the disallowance of deduction claimed u/s.57 of the Act to the tune of Rs.27,72,097/- was made in the assessment order for the A.Y.2011-12 in the previous reassessment proceedings passed u/s.144 rws 147 dated 21-12-2016. Apparently, no such disallowance has been made in the instant assessment order which is the subject matter of appeal. Although, the first Appellate Authority is invested with very wide powers, these powers are circumscribed by the assessment order and the matters arising thereof. There is no provision to go beyond the issues other than the ones deliberated in the assessment order. In the present case, only addition made in the assessment order is Rs.1,74,13,022/- being 8% of the total credit entries at Rs.21,76,62,778/-. Under the circumstances, grounds praying to allow other disallowances not made in the subject assessment order cannot be acceded to. Therefore, this ground of appeal is dismissed.

Ground No.4 is regarding initiation of penalty proceedings u/s.271(1)(c) of the Act by the Assessing Officer. In this regard, after perusing the records it is opined that the penalty proceedings u/s.271(1)(c) of the Act have rightly and unequivocally invoked by the Assessing Officer and it does not warrant any interference. Hence, ground No.4 is dismissed.”

3.2 Since, the Ld. CIT(A) has dismissed the grounds raised in above appeals mainly for the reason of not submitting any evidence



in support of any prayer made before the Hon'ble High Court for removing prohibitions/ restrictions for access to the concerned premises where books of account or any other documentary evidence were stored. However, before us, the Ld. Counsel for the assessee submitted that assessee is willing to produce all the documentary evidence if matter is restored back to the file of the Ld. CIT(A). Accordingly, looking to the prayer of the assessee and in the interest of substantial justice, we feel it appropriate to provide one more opportunity to the assessee and restore the matter involved in all the appeals back to the file of the Ld. CIT(A) for deciding afresh after providing adequate opportunity of being heard to the assessee. The grounds raised by the assessee are accordingly allowed for statistical purposes.

4. In the result, all the appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open Court on 21/02/2024.

Sd/-
(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai;
Dated: 21/02/2024
Rahul Sharma, Sr. P.S.



Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,
(Assistant Registrar)
ITAT, Mumbai