

IN THE INCOME TAX APPELLATE TRIBUNAL  
“F” BENCH, MUMBAI

BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &  
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER  
ITA No. 3553/Mum/2023

(A.Y: 2010-11)

Free India Broking Services Pvt Ltd, 108, Prime Plaza, JV Patel Compound, Elphistone (W), Mumbai-400013	Vs.	ACIT, CPC IncomeTaxDepartment, Electronic City, Post Office, Bangalore -560100.
PAN/GIR No. : AAACF5729Q		
Appellant	..	Respondent

Assessee by :	Shri.Subodh Ratnaparkhi.AR
Revenue by :	Ms. Rajeshwari Menon Sr.DR

Date of Hearing	21.02.2024
Date of Pronouncement	23.02.2024

आदेश / O R D E R

**PER PAVAN KUMAR GADALE JM:**

The appeal is filed by the assessee against the order of the Commissioner of Income Tax (Appeals)-48, Mumbai passed u/sec 143(1) and U/sec 250 of the Ac. The assessee has raised the following grounds of appeal:

- 1. The Hon CIT(A) erred in not condoning the delay in filing of appeal against intimation u/s 143(1) dt. 15.12.2011, not accepting the contention that the appellant was un-aware of the intimation u/s 143(1) processed by ACIT, CPC- Bangalore for A.Y 2010-11, as such intimation was never physically received*

*and therefore the order of the Hon. CIT(A) dismissing the appeal is not justified and may kindly be over turned and set aside*

*2. The determination of total income of Rs.59,61,954/- u/s 115JB of the IT Act, 1961, by way of prima facie adjustment by the ACIT, CPC- Bengaluru, on account of share of income from AOP's is not justified as such prima facie adjustment is outside the scope of prima facie adjustments permitted by section 143(1)(a) of the I. T. Act, 1961 and therefore the income determined u/s 115JB bears to be cancelled/deleted.*

*3. The determination of total income of Rs.59,61,954/- u/s 115JB of the IT Act, 1961, is also not justified in view of clause (iic) to Explanation 1 of section 115JB(2), which specifically provides for exclusion of share of income received by the assessee from an AOP while computing book profit and therefore the said amount could not be considered as deemed total income u/s 115JB of the IT Act, 1961 and the consequent addition u/s 115JB bears to be deleted.*

*4. Without prejudice to the above, the income of the AOP had been charged to tax in its own hands at maximum marginal rate and therefore the same amount cannot be included in the hands of the appellant for application of sec. 115JB of the IT Act, 1961.*

*5. The appellant craves leave to add, alter, amend, delete and/or vary the grounds of appeal at any time before the decision of the appeal.*

2. The brief facts of the case that, the assessee is a Private Limited Company and is engaged in the business. The assessee has filed the revised return of income for the A.Y 2010-11 on 31.10.2011 disclosing a total income 'Nil'. Subsequently, the return of income was processed by

computing the deemed income u/sec 115JB of the Act of Rs.59,61,954/- vide order u/sec143(1) of the Act dated 15.12.2011.

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 also there was delay in filling the appeal. Since there was partial compliance by the assessee and delay was not explained. Therefore the CIT(A) considering the information on record has not admitted the appeal on maintainability and dismissed the assessee 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 not considered the facts that the assessee has not received assessment order, but due to recovery of demand by the revenue, the assessee has obtained the copy of order u/sec143(1) of the Act and filed the appeal before the appellate authority and the delay is not a wanton act. Further the Ld. AR emphasized that the assessee has good case on merits and prayed for an opportunity to

substantiate the case with evidences and information before the authorities. Per Contra, the Ld.DR supported the order of the CIT(A).

5. We heard the submissions and perused the material on record. Prima-facie, the CIT(A) has passed the order considering the fact that there is no proper compliance by the assessee in respect of delay in filing the appeal. Therefore, the CIT(A) was of the opinion that the appeal is not maintainable as the delay in filling the appeal was not explained. The Ld CIT(A) has dealt on facts at Para 5.2 of the order and came to a conclusion that the assessee has not explained the reasonable cause for the delay. Whereas the Ld. AR submitted that the assessee became aware of the order u/sec143(1) of the Act only when the recovery notice dated 7.01.2020 issued to the sister concern on the similar matter and has downloaded the order/intimation from the website of the Income Tax Department and filed the appeal before the CIT(A). Further the Ld.AR has referred and demonstrated the status of filed returns as per the Income Tax Portal downloaded sheet, in particular for the A.Y.2010-11, the process of order dated 15-12-2011 and there are no details or information pertaining to sms, email and details of speed post in respect of the order. The

Ld.AR has highlighted on the assessee affidavit at page 1 to 3 of paper book on the knowledge of order u/sec143(1) of the Act. Whereas the assessee has raised grounds of appeal challenging the addition of the A.O with the CIT(A) and therefore, considering the principles of natural justice shall provide with one more opportunity of hearing to the assessee to substantiate with the condonation application before the appellate authority. Accordingly, we set aside the order of the CIT(A) and remit the entire disputed issues to the file of the CIT(A) to consider the application explaining the reasonable cause on the delay as discussed and to adjudicate afresh in accordance with the law. 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 23.02.2024.

Sd/-  
(GAGAN GOYAL)  
**ACCOUNTANT MEMBER**

Sd/-  
(PAVAN KUMAR GADALE)  
**JUDICIAL MEMBER**

Mumbai, Dated 23.02.2024

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

( Asst. Registrar)  
ITAT, Mumbai