

IN THE INCOME TAX APPELLATE TRIBUNAL
"G" BENCH MUMBAI
BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER &
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No. 3497/Mum/2023

(Assessment Year: 2014-15)

Salman Maqsood Khan Winde Mere, 2B- Flat No. 141 Near Mega Mall, Opposite New Link road, Oshiwara Mumbai- 400053	बनाम/ Vs.	Income Tax Officer, Ward - 31(1)(1), Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : BJFPK9006F		
(अपीलार्थी / Appellant)		(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से / Appellant by :	Shri Shashak A. Mehta
प्रत्यर्थी की ओर से/ Respondent by :	Shri Manoj Kumar Sinha

सुनवाई की तारीख / Date of	27/02/2024
Hearing	
घोषणा की तारीख / Date of	28/02/2024
Pronouncement	

आदेश / ORDER

PER SANDEEP SINGH KARHAIL - JM:

The present appeal has been filed by the assessee challenging the impugned order dated 29/08/2023 passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [*"learned CIT(A)"*], for the assessment year 2014-15.

2. In this appeal, the assessee has raised the following grounds:-

"1. In the facts and circumstances of the case and law, the learned Commissioner of Income Tax (Appeals) has erred in upholding the action of the Assessing Officer in reopening the assessment in utter disregard to the legal pre-requisites provided under the provisions of section 147, 148, 149, 151 of the Act.

2. In the facts and circumstances of the case and law, the Learned Commissioner of Income Tax (Appeals) has erred in upholding the action of the Assessing Officer in making addition under section 69 of Rs. 72,98,990/- alleging it to be outstanding amount in Appellant's bank account.

3. In the facts and circumstances of the case and law, the Learned Commissioner of Income Tax (Appeals) has erred in upholding the action of the Assessing Officer of completing the assessment under section 147 read with section 143(3) of the Act on ex-parte basis even when the Appellant had duly replied and provided all the relevant documentary evidences to substantiate the transactions made by him.

4. The appellant craves leave to add, alter, delete or modify all or any of the above grounds of appeal. All the above grounds are without prejudice to each other."

3. During the hearing, at the outset, the learned Authorised Representative (*"learned AR"*) submitted that the assessee filed its response to the notices issued during the course of assessment proceedings, however the Assessing Officer (*"AO"*) without considering any of the submissions of the assessee proceeded to complete the assessment under section 144 of the Act and assessed the total income of the assessee at Rs.74,75,920. The learned AR further

submitted that the assessee could not attend the appellate proceedings before the learned CIT(A) as he could not check the email on which the notices were sent.

4. On the other hand, the learned Departmental Representative vehemently relied upon the orders passed by the lower authorities.

5. We have considered the submissions of both sides and perused the material available on record. In the present case, proceedings under section 147 of the Act were initiated and notice under section 148 of the Act was issued to the assessee on 20/03/2020. In response to the aforesaid notice, the assessee filed his return of income on 03/03/2021 declaring a total income of Rs.1,76,930. It is evident from the record that subsequently statutory notices under section 143(2) as well as section 142(1) along with questionnaires were issued to the assessee calling for details, documents, and evidence in support of the income declared. From the factual paper book filed by the assessee, we find that the assessee filed its response on 05/03/2021 in response to the notice dated 17/02/2021 issued under section 142(1) of the Act. From the copy of the aforesaid response forming part of the paper book from pages 4-61, we find that the assessee, inter-alia, furnished computation of total income, trade details, brokers ledger, summary of bank account, ICICI bank statement, and HSBC bank statement. However, the AO vide order dated 30/07/2021 passed under section 147 of the Act without considering any of these documents proceeded to conclude the assessment on a best-judgment basis. We also find that the AO even issued a show cause notice on the proposed adjustment on 05/07/2021. Therefore, from the aforesaid details, it is sufficiently evident that none of the details filed by the assessee were considered by the AO while passing the assessment order. In the appeal before the learned CIT(A), despite notices being issued, no reply/submission was filed on behalf of the assessee. Accordingly, vide impugned ex-parte order dated 29/08/2023, the learned CIT(A) dismissed the appeal filed by the assessee. In view of the facts and circumstances as noted above, we deem it appropriate to

restore the matter to the file of the AO for *de novo* adjudication after consideration of the details/submissions filed by the assessee. Needless to mention no order shall be passed without affording reasonable opportunity of being heard to the assessee. The assessee is also directed to furnish any other information as may be sought by the AO. As the matter is being restored to the file of the AO for consideration afresh, the other grievances raised by the assessee in the present appeal do not call for adjudication at this stage. Accordingly, grounds raised by the assessee are allowed for statistical purposes.

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

Order pronounced in the open court on 28/02/2024

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

Sd/-
(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER

Mumbai, Dated: 28/02/2024

Shubham P. Lohar

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

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

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Asst. Registrar)

आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Mumbai