

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

**BEFORE SHRI OM PRAKASH KANT, AM AND  
MS. KAVITHA RAJAGOPAL, JM**

ITA No. 3725/Mum/2023  
(Assessment Year: 2014-15)

Apurva Paresh Shah A 501, Nirmal Sagar, Devidas Road, Borivali (W), Mumba-400 092	Vs.	ITO 32 (1)(2) Mumbai
PAN/GIR No. AMTPS 9910 Q		
(Assessee)	:	(Respondent)
Assessee by	:	None
Respondent by	:	Shri Manoj Kumar Sinha
Date of Hearing	:	29.02.2024
Date of Pronouncement	:	29.02.2024

**ORDER**

**Per Kavitha Rajagopal, J M:**

This appeal has been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals) ('Id.CIT(A) for short), National Faceless Appeal Centre ('NFAC' for short) passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2014-15.

2. As there was representation on behalf of the assessee, we hereby proceed to decide this appeal by hearing the learned Departmental Representative ('Id.DR' for short) and on perusal of the materials available on record.

3. The assessee has challenged this appeal on the following grounds:

*"1. On the facts and circumstances of the case, the learned assessing officer has erred in holding that decrease in rental income in previous year as compared to AY 2013-14 is income in form of undisclosed rental income. The Len. Assessing officer has made the additions just on guess work, surmises and conjectures.*

2. The cash deposits of Rs.29,41,928/- was from cash in hand only which was withdrawn from time to time from Banks only. The nature of business of assessee is such that it was necessary to keep cash in hand.

3. On the facts and circumstances of the case, the learned assessing officer was in hurry to pass the order u / s 143(3) of the Income Tax Act, 1961 in December time barring matters and has erred in holding that the appellant has not established the genuineness, identity and creditworthiness of the loan creditors of Rs.90,00,000/-. All are genuine lenders. The Len. Assessing officer has made the additions just on guess work, surmises and conjectures.

4. The A.O. erred in charging interest u / s 234B and 234 C of the Income Tax Act, 1961.

5. On the facts and circumstances of the case and in law, the learned assessing officer has erred in initiating penalty proceedings u / s 271(1)(C) of the Income Tax Act, 1961.

4. The brief facts are that the assessee is an individual and a partner in partnership firm engaged in the business of construction and renting of property. The assessee has filed his return of income on 05.07.2015, declaring total income at Rs.13,26,181/- out of salary income, business income, income from house property and income from other sources and the same was processed u/s. 143(1) of the Act. The assessee's case was then selected for scrutiny under CASS and notice u/s. 143(2) and 142(1) were duly issued and served upon the assessee.

5. The Id. Assessing Officer ('A.O.' for short) observed that there had been a cash deposit in the assessee's account with Kapol Co-operative Bank Ltd. amounting to Rs.20,90,000/- and Rs.32,00,000/- in the bank account maintained with Bank of Baroda. The Id. A.O. sought for details pertaining to the said cash deposits. The assessee had stated the opening cash balance was Rs.23,68,110/- and the total withdrawal was Rs.65,81,741/- and further the unsecured loan as per the balance sheet was Rs.90,00,000/- from M/s. SS Developers. The Id. A.O. not satisfied with the assessee's explanation determined the total income at Rs.1,36,12,760/- by making various additions.

6. Aggrieved the assessee was in appeal before the Id. CIT(A) who upheld the addition made by the Id. A.O. on the ground that the assessee has been non compliant

throughout the appellate proceeding and had failed to substantiate his claim by any documentary evidence.

7. The assessee is in appeal before us, challenging the impugned order of the Id. CIT(A).

8. We have heard the learned Departmental Representative ('Id.DR' for short) and perused the materials available on record. It is observed that the assessee has not proved the identity and creditworthiness of the parties and the genuineness of the transaction neither before the Id. A.O. nor before the Id. CIT(A). It is also pertinent to point out that even before us, the assessee has not furnished any submission nor any supporting documentary evidence to substantiate the claim of the assessee, failing which the assessee has failed to discharge the initial onus casted upon him. As it is observed that the Id. CIT(A) has not decided the issues on the merits of the case, we deem it fit to remand this issue back to the file of the Id. CIT(A) on the principles of natural justice with the direction that the assessee should co-operative with the proceeding before the first appellate authority without any undue delay.

9. In the result, the appeal filed by the assessee is allowed for statistical purpose.

*Order pronounced in the open court on 29.02.2024*

Sd/-

Sd/-

(Om Prakash Kant)  
Accountant Member

(Kavitha Rajagopal)  
Judicial Member

Mumbai; Dated : 29.02.2024  
Roshani, Sr. PS

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent
3. CIT - concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt. Registrar)  
ITAT, Mumbai