

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

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER &  
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER,**

**ITA No.3833/Mum/2023  
(A.Y. 2013-14)**

Digihome Solutions Private Limited, 366, Veer Savarkar Marg, Dadar West, Mumbai – 400028	Vs.	Dy. Comm. Of Income Tax, Ward 6(2)(3) Aaykar Bhavan, Mumbai – 400028
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No:AACCD3082A		
Appellant	..	Respondent

Appellant by :	Haridas Bhat
Respondent by :	Manish Ajudiya

Date of Hearing	04.03.2024
Date of Pronouncement	07.03.2024

**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 20.09.2023 for A.Y. 2013-14. The assessee has raised the following grounds before us:

- “1. *On the facts and circumstances of the case, and in Law, the CIT Appeals, erred in adjudicating the appeal without considering the submissions made and confirming the addition of Rs. 49,99,749/ of the Act which is bad at law.*
2. *On the facts and circumstances of the case and in law the AO failed to appreciate that*
  - a) *The assessee has made the submissions which are acknowledged by the CIT(A).*
  - b) *The CIT(A) neither asked for any details nor remanded the case to the AO, ignoring the fact that the 143(3) order was passed U/s 144, by*

*giving the reason that contracts and sales register were not submitted.*

- c) Even if the addition is confirmed the Assessee had enough brought forward losses, which is ignored by the CIT(A) without any reasoning*
  - d) The additions are based on the gross income as per ITS/ 26AS and ignoring the fact that there will be some expenditure to earn the income.*
3. *The Appellant therefore prays that the assessment completed u/s 147 r.w.s 144 of the Act may please be send back to the concerned AO to give proper opportunity to the Assessee.*

*The appellant craves leave to add to, alter, and / or amend the above grounds of appeal.”*

2. Fact in brief is that as per AIR information it was revealed that assessee company had received an amount of Rs.3,74,343/- on account of turnover from services as per service tax return Rs.1,27,830/- on account of other interest u/s 194A and Rs.44,97,579/- on account of payment to contractor u/s 194C of the Act. Since, 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. During the course of assessment the AO has issued notices u/s 142(1) however, the assessee has not made any compliance. Due to non-compliance on the part of the assessee the assessing officer has computed the assessment u/s 144 of the Act and the aforesaid total receipt of Rs.49,99,749/- was treated as assessee's undisclosed income for the year under consideration.

3. The assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee holding that assessee had not filed its return of income and assessee has not filed any detail such as contract notes, sale register etc, to substantiate its claim.

4. During the course of appellate proceedings before us the ld. Counsel submitted that sufficient opportunity were not granted by the assessing officer and the notices issued by the assessing officer were

not received by the assessee and notice issued u/s 148 was not correctly served on the assessee company therefore, no compliance could be made before the assessing officer. The assessee has filed the detail i.e purchase, copies of purchase invoices, detail of interest paid and detail of expenditure etc. as placed in paper book comprising 1 to 132 pages, however, the ld. CIT(A) has neither considered the detail filed nor called any remand report and also not asked the assessee to furnish any further detail to substantiate its claim.

On the other hand, the ld. D.R supported the order of lower authorities.

5. Heard both the sides and perused the material on record. Without reiterating the facts as discussed supra in this order the assessing officer has treated the gross receipt of Rs.49,99,749/- on the basis of information received from service tax return filed and AIR information. The assessee has submitted that due to non-operation of the assessee company no compliance could be made before the assessing officer. We find that before the ld. CIT(A) the assessee has submitted various details i.e purchase invoices, detail of interest paid, copy of bank statement, copy of various expenses, etc. comprising 132 pages, however, it is noticed that neither the ld. CIT(A) has rejected the detail furnished by the assessee in the paper book nor called any remand report before dismissing the appeal. Looking to the above facts and circumstances normally whenever any irregularity crept in the proceedings then after removing the irregularities proceedings is to be initiated from that stage, by remitting the issue to the ld. CIT(A) we would be multiplying litigation the ld. CIT(A) would call for remand report from the AO and the proceedings would comments on two stages, therefore, in order to avoid that situation we would deem it proper to remit of the issue to the file of the AO for decide de novo after verification of the claim of expenditure

against the gross receipt made by the assessee. Needless to say that adequate opportunity be provided to the assessee. Therefore, the appeal of the assessee is allowed for statistical purposes.

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

Order pronounced in the open court on 07.03.2024

Sd/-

(Kuldip Singh)  
Judicial Member

Sd/-

(Amarjit Singh)  
Accountant Member

Place: Mumbai

Date 07.03.2024

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.**