

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

BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &
MS. PADMAVATHY S, ACCOUNTANT MEMBER
ITA No. 3910/Mum/2023
(A.Y: 2012-13)

Mukesh.B.Bajaj, Flat No. A-302, Saibaba, Arcade, Sector-11, Vashi Navi Mumbai-400703.	Vs	ITO-28(2)(2), Vashi, Navi Mumbai-400703.
PAN/GIR No. : AEMPB1761K		
Appellant	..	Respondent

Assessee by :	Shri. Fenil Bhatt.AR
Revenue by :	Shri R.R. Makwana.DR

Date of Hearing	15.04.2024
Date of Pronouncement	16.04.2024

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

The appeal is filed by the assessee against the order of the National Faceless Appeal Centre (NFAC) Delhi / CIT(A) passed u/sec 147 r.w.s 144 and U/sec 250 of the Act.

2. At the time of hearing, it was submitted that there is a delay of 1 day in filing the appeal before the Hon'ble Tribunal and the assessee has filed an affidavit for condonation of delay. Whereas, the facts mentioned in the affidavit are reasonable and the Ld. DR has no specific

objections. Accordingly, we condone the delay and admit the appeal.

3. The assessee has raised the following grounds of appeal:

1. 1.1. *On the facts and in circumstances of the case and in law, the Learned National Faceless Appeals Centre ("Ld. NFAC") vide order dated August 30, 2023 under section 250 of the Income tax Act, 1961 ("the Act") erred in dismissing the appeal of the Appellant on the ground of non-prosecution.*

1.2. *The Appellant prays that order dated August 30, 2023 passed by the Ld. NFAC under section 250 of the Act be quashed and set aside and the matter be remanded to the file of the Ld, NFAC for fresh adjudication.*

2.1. *On the facts and in the circumstances of the case and in law, the Ld. NFAC erred in not appreciating that reassessment under section 147 of the Act is without jurisdiction, as condition precedents of section 147 of the Act are not satisfied in the Appellant's case.*

2.2. *The Appellant prays that reopening under section 147 of the Act be treated as without jurisdiction and the reassessment order dated December 19, 2019 be quashed and set aside.*

3.1. *On the facts and in the circumstances of the case and in law, the Ld. NFAC erred in confirming the addition made by the Ld. Assessing officer erred ("AO") under section 69A of the Act amounting to Rs. 14,38,000 with relation to cash deposited in the bank account.*

3.2. *The Appellant prays that the Ld. AO be directed to delete the addition of Rs. 14,38,000 under section 69A of the Act.*

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4.1. *On the facts and in the circumstances of the case and in law, the Ld. NFAC erred in confirming the addition made by Ld. AO amounting to Rs. 22,00,000 under section 69 of the Act of term deposits made under sweep in and sweep out facility offered by the Bank.*

4.2. *The Appellant prays that the Ld. AO be directed to delete the addition of Rs. 22,00,000 made under section 69 of the Act.*

5.1. *On the facts and in the circumstances of the case and in law, the Ld. AO erred in charging interest under section 234A amounting to Rs. 8,55,360/-, under section 234B amounting to Rs. 9,03,960/- and under section 234C of the Act.*

5.2. *The Appellant prays that the Ld. AO be directed to delete interest charged under section 234A, 234B and 234C of the Act or be appropriately reduced, in accordance with law.*

4. The brief facts of the case are that, the assessee is engaged in the real-estate business. The Assessing Officer (A.O) as per the AIR Information, in the F.Y.2011-12 (i) the assessee has made cash deposits of Rs.14,38,000/- in savings bank account of Kotak Mahindra Bank Ltd (ii) the assessee has made time deposits aggregating to Rs.22,00,000/- with Kotak Mahindra Bank Ltd (iii) the assessee has made transactions of Rs.3,53,42,900/- in National / Multi Commodity Exchange and (iv) interest income of Rs. 10,000/- was received by the assessee from Kotak Mahindra Bank. The AO after recording the reasons for reopening of assessment has issued notice u/sec 148 of

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the Act and subsequently notice u/sec 142(1) of the Act was issued through ITB portal. Further, the A.O has issued show cause notice. Since there was no compliance by the assessee to the notices, therefore the AO has invoked the provisions of Sec. 144 of the Act and has made best judgment assessment and relied on the details available on record. The AO has issued notice u/sec 133(6) of the Act on Kotak Mahindra Bank calling for statement of account and KYC details and similarly issued notice on M/s.Multi Commodity Exchange and M/s.Aditya Birla Commodities for the transactions of the assessee. Finally the AO relying on the facts and details made addition of cash deposits with the Kotal Mahindra Bank as unexplained money of Rs.14,38,000/- u/sec 69A of the Act. On the second disputed issue, the AO found that the assessee has made term deposits of Rs. 22 lakhs with Kotak Mahindra Bank and since there was no compliance and no evidence was filed supporting the sources of deposits, the A.O made addition of Term Deposits of Rs.22,00,000/- as unexplained Investments U/sec 69 of the Act. Similarly the interest income received from Kotak Mahindra Bank of Rs.10,000/- was taxed under income from other sources and the A.O has assessed the total income of Rs.36,39,000/- and

passed the order u/sec 144 r.w.s 147 of the Act dated 19.12.2019.

5. 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 since there was no compliance by the assessee to notices. Therefore the CIT(A) considering the information on record has confirmed the action of the A.O and dismissed the appeal. Aggrieved by the order of the CIT(A), the assessee has filed an appeal before the Hon'ble Tribunal.

6. At the time of hearing, the Ld. AR submitted that the CIT(A) has erred in confirming the action of the Assessing officer overlooking the facts in the assessment proceedings. Further the assessee has a good case on merits and shall substantiate with the material evidences in support of sources of cash deposits and term deposits and prayed for an opportunity to explain before the lower authorities. Contra, the Ld. DR supported the order of the CIT(A).

7. We heard the rival submissions and perused the material on record. Prima-facie the CIT(A) has passed the order considering the fact that there is no appearance in spite of

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providing adequate opportunity of hearing and the notices were issued. Therefore, the CIT(A) was of the opinion that the assessee is not interested in prosecuting the appeal and dismissed the appeal ex-parte confirming the action of the assessing officer. The CIT(A) has issued the notices, fixing the date of hearing on 08.01.2021, 30.06.2022 & 24.07.2023 referred at Page 2 Para 4 of the order, but there was no response and thus the Ld.CIT(A) came to a conclusion that the assessee is not interested and decided the appeal based on the information available on record. Whereas the assessee has raised grounds of appeal challenging the additions U/sec 69 and U/sec69A of the Act by the assessing officer and there could be various reasons for non appearance which cannot be overruled. The Ld.AR emphasized that the assessee has a good case on merits and shall substantiate the sources with the material evidences. Therefore, considering the principles of natural justice shall provide with one more opportunity of hearing to the assessee to substantiate the case with evidences and information. Accordingly, set aside the order of the CIT(A) and remit the entire disputed issues to the file of the CIT(A) to adjudicate afresh and the assessee should be provided adequate opportunity of hearing and shall cooperate in

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submitting the information for early disposal of the appeal. Accordingly, allow the grounds of appeal of the assessee for statistical purposes.

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

Order pronounced in the open court on 16.04.2024.

Sd/-
(PADMAVATHY S)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 16.04.2024

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.

ITA No. 3910/Mum/2023
Mukesh B Bajaj, Mumbai.

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(Asst. Registrar)
ITAT, Mumbai