

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI

BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER AND
MISS. PADMAVATHY.S, ACCOUNTANT MEMBER

ITA 4051/Mum/2023
(Assessment year 2013-14)

Mr. Munish Haresh Tahiliani R No.601, Shreedhar Palace CHS, 34, Bhalchandra Road, Dadar, Mumbai-400 014 PAN :AFEPT6455P	vs	Income-tax Officer-20(2)(1), Piramal Chamber, Lalbaug, Mumbai-400 012
APPELLANT		RESPONDENT

Assesseeby : Shri Mahavir Jain
Respondent by : Shri R.R. Makwana, JCIT
Date of hearing : 17/04/2024
Date of pronouncement : 18/ 04/2024

ORDER

PER ANIKESH BANERJEE, A.M:

Instant appeal of the assessee was filed against the order of the National Faceless Appeal Centre, Delhi (NFAC)[for brevity, 'Ld.CIT(A)'] passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act') for Assessment Year 2013-14 date of order 14/09/2023.

The impugned order was emanated from the order of the Ld. Income Tax Officer-(W) 20(2)(1), Mumbai (in short, 'the A.O.')

passed under section 143(3) of the Act, date of order 14/03/2016.

2. The assessee has taken the following grounds of appeal: -

- “1. That on the facts and circumstances of the case and in law, order passed by Ld.CIT(A) is bad in law.
2. That on the facts and circumstances of the case and in law, order passed by Ld.CIT(A) is in violation of principles of natural justice. Hence, the same should be set aside.
3. That on the facts and circumstances of the case and in law, order passed by Ld.CIT(A) is bad-in-law since the Ld.CIT(A) has passed the order without considering the adjournment request dated 12.09.2023 filed by the Appellant, wherein the Appellant has sought time till 28.09.2023 or filing reply.
4. That on the facts and circumstances of the case and in law, order passed by Ld.CIT(A) is bad-in-law since the Ld.CIT(A) has not decided the case on merits.
5. That on the facts and circumstances of the case and in law, order passed by Ld.AO has erred in making an addition of Rs.7,89,161/- on account of suppressed sales without considering the fact that there was no difference in sales recorded in cash book and sales book.
6. That on the facts and circumstances of the case and in law, order passed by Ld.AO has erred in making an addition of Rs.27,89,161/- on account of suppressed sales without considering the fact that there was no difference in sales recorded in cash book and sales book.
7. That on the facts and circumstances of the case and in law, order passed by Ld.AO has erred in rejecting the books of accounts of the appellant.”

3. The brief fact of the case is that the assessee is a trader of liquor and beer through the counter-sale in the nature of cash transaction. The case was selected for scrutiny under CASS. During the course of hearing, the

assessee supplied two sets of books of account. Finding the discrepancy, the Id. AO rejected the books of account and enhanced the business turnover of the assessee. The assessee declared the turnover of Rs.7,90,19,997/- whereas determined by the Id. AO the sales was of Rs.8,18,09,158/-. So, the difference amount of Rs.27,89,161/- was added to the total income of the assessee. Aggrieved, assessee filed appeal before the CIT(A). but the appellate order was passed *ex parte* without considering the facts of the case and upheld the assessment order. Being dissatisfied on the appellate order, the assessee filed appeal before us.

4. The Ld.AR vehemently argued and placed that the date of hearing was fixed on 12/09/2023. The assessee filed an adjournment petition and requested for fixing the hearing on 28/09/2023. Ld.CIT(A) had rejected the assessee's plea and without considering the fact of the case, the appellate order was passed. So the Ld.AR prayed to send back the matter to the file of the Ld.CIT(A) for further adjudication de novo.

5. The Ld.DR vehemently argued and fully relied on the order of Revenue Authorities.

6. We heard the rival submissions and considered the documents available on record. The observation of the Ld.CIT(A) is duly reproduced as below: -

“Determination and Decision

6. In this case, the appellant has not effectively pursued the appellate proceedings, rather not pursued his case at all, despite the service of notices as mentioned in paras above. Notices as mentioned above were sent, but there was no response from the appellant.

6.1 Finally a notice dated 08.09.2023 was sent to the appellant requiring compliance on 13.09.2023 whereby it was specifically stated that a final opportunity is given to furnish to the appellant to file written submission/evidence & proof in support of his contention on or before the scheduled date as mentioned in the said notice, failing which it shall be presumed that the

appellant has no explanation to offer/no proof or evidence in support of his contention, and appeal would be decided accordingly. The final notice is as under:-

"Pease refer to the appeal filed by you on 24.04.2016 for A.Y 2013-2014. In this regard, kindly refer to notices u/s 250 of the Income Tax Act, 1961 dated, 03.08.2023, 16.08.2023 & 29.08.2023. However, no compliance has been made in response to aforesaid notices. Now, another opportunity is given to furnish your written submission/evidences, proof in support of your contention on or before the scheduled date as mentioned in this notice, failing which it shall be presumed that you have no explanation to offer/ no proof or evidence in support of your contention, and appeal would be decided accordingly.

Kindly note that no further opportunity would be given to you in this case."

The assessee's books of account are rejected and the difference of amount of Rs.27,89,161/- was added back to the total income of the assessee. The assessee prayed for adjournment; but the adjournment petition was rejected and the time was not allowed. So, the reasonable opportunity was denied for assessee to defend its case before the revenue authorities. In our considered view, we remit back the matter to the file of Ld.CIT(A) for further adjudication on merit. Needless to say, the assessee should get a reasonable opportunity of hearing before the Ld.CIT(A) in the appellate proceedings.

7. In the result, the appeal of the assessee bearing ITA No.4051/Mum/2023 is allowed for statistical purpose.

Order pronounced in the open court on 18th day of April, 2024.

Sd/-

(PADMAVATHY. S)
ACCOUNTANT MEMBER
Mumbai, दिनांक / Dated: 18/04/2024
Pavanan

sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Asstt.Registrar), ITAT, Mumbai