

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

BEFORESHRI B.R. BASKARAN, ACCOUNTANT MEMBER

**ITA NO.4294/MUM/2023
Assessment Year 2012-13**

Shaym Varandmal Rochlani.
905, Flat No.102, 1st Floor,
Mangal Murthi Apt.,
C-Block, Ulhasnagar – 421 005.
PAN:AGEPR-2829-Q

- Appellant

Vs.

Income Tax Officer Ward 2(11). Kalayn
Kalyan -421 005.

- Respondent

Appellant by : None
Respondent by : Shri Suni Mathews

Date of Hearing : 29/04/2024
Date of Pronouncement : 29/04/2024

ORDER

The assessee has filed this appeal challenging the order dated 26-09-2023 passed by Ld CIT(A), NFAC, Delhi and it relates to the assessment year 2012-13. The assessee is aggrieved by the decision of Ld CIT(A) in dismissing the appeal of the assessee in an ex-parte order passed by him.

2. None appeared on behalf of the assessee and I notice that the registry has sent notice of hearing to the assessee. Hence, I proceed to dispose of the appeal ex-parte, without hearing the assessee.

3. I heard Ld D.R and perused the record. The assessee is a retail trader in garments at Ulhasnagar Shop. He has declared his income u/s 44AD of the Act @ 8% of his turnover. The AO reopened the assessment upon receipt of information that the assessee has deposited cash in excess of Rs.10.00 lakhs in his bank account. The aggregate amount of deposit was Rs.75,94,766/-. However, the assessee had declared turnover of Rs.42,53,980/- in his Garments business and returned income u/s 44AD of the @ 8%. The assessee claimed that the deposits made into the bank

account represented his business receipts by way of turnover, collection from debtors and advance amount received from customers etc., but the AO did not accept the same. Accordingly, he assessed the difference of Rs.36,44,322/- as unexplained income of the assessee. The AO also disallowed the claim for deduction of Rs.1,00,000/- u/s 80C of the Act. As noticed earlier, the Ld CIT(A) dismissed the appeal of the assessee in the ex-parte order passed by him.

4.I have heard ld. Departmental Representative and perused the record. I notice that the ld.CIT(A) has given several notices to the assessee, but the assessee has failed to respond the notices. Hence, the ld.CIT(A) has proceeded to dismiss the appeal confirming the additions made by the AO. I notice that the tax authorities did not consider an important point that the assessee has declaring income u/s 44AD of the Act, meaning thereby, the assessee might not have maintained proper books of accounts. Under these circumstances, I am of the view that the assessee should have been allowed to explain/reconcile the deposits. Hence, in the interest of natural justice, I am of the view that the assessee may be provided with one more opportunity to present its case properly before the ld. CIT(A). Accordingly, I set aside the order passed by Ld CIT(A) and restore all the issues to his file for adjudicating them afresh. I also direct the assessee to fully co-operate with ld.CIT(A) for expeditious disposal of the appeal.

5. In the result, the appeal filed by the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on 29th April, 2024.

Sd/-

(B.R. Baskaran)
Accountant Member

Mumbai, Date : 29th April, 2024

VM.

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The PCIT/CIT concerned
- 4) The D.R, "SMC" Bench, Mumbai
- 5) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai