

IN THE INCOME TAX APPELLATE TRIBUNAL, "F" BENCH
MUMBAI
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

ITA. No. 4871/MUM/2023
(A.Y.2020-21)

Mr. Manish Srichand Pardasani, 701, Laxmi Niwas, 16 th Road Khar West, Mumbai-400052.	Vs .	DCIT-C.Circle- 3(4), RNo. 1915,19 th Floor, Air India Bldg, Nariman Point, Mumbai-400021.
PAN/GIR No. AHDPP1965F		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

Assessee by	Mr. Anand Kanse.AR.
Revenue by	Ms. Rajeshwari Menon.Sr.DR

सुनवाई की तारीख/Date of Hearing	14.05.2024
घोषणा की तारीख/Date of Pronouncement	15.05.2024

ORDER

PER PAVAN KUMAR GADALE, JM:

The assessee has filed the appeal against the order of the Commissioner of Income Tax (Appeals)(CIT(A))-51 Mumbai passed u/sec143(3) and u/sec 250 of the Act.

2. At the time of hearing, the Ld.AR of the assessee submitted that there is a delay in filing the appeal before the Hon'ble Tribunal and filed an application 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. The assessee has raised the following grounds of appeal:

1) That on the facts and circumstance of the case and in law, the Ld. CIT(A) erred in passing an ex-parte order.

2) That on the facts and circumstance of the case and in law, the Ld. CIT(A) erred in passing an ex-parte order without even going into the merits of the case.

3) That on the facts and circumstance of the case and in law, the Ld. CIT(A) erred in upholding the order of the Ld. A.O. wherein an addition of Rs. 65,00,000 was made on account of unexplained money u/s 69A of the Income Tax Act, 1961.

4) That on the facts and circumstance of the case and in law, the Ld. CIT(A) and the ld. A.O. failed to appreciate the fact that the appellant was holding the said cash only in the capacity of director of the company as a custodian for safekeeping and not in his personal capacity, therefore, no addition should be made in the hands of the Appellant.

5) That on the facts and circumstance of the case and in law, the Ld. CIT(A) and the ld. A.O. failed to appreciate the fact that the cash belong to M/s Mumbai Wines and Trades Pvt. Ltd and the same is appearing in the books of M/s Mumbai Wines and Trades Pvt. Ltd., therefore, no addition should be made in the hands of the Appellant.

6) That on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in confirming the addition made by the Ld.A.O., of Rs. 65,00,000 once again in the hands of the appellant when the same have already been included in the

turnover and taxes paid by the company i.e. M/s Mumbai Wines Pvt. Ltd in which the appellant is the director.

7) That on the facts and circumstances of the case and in law, the Ld. CIT(A) failed to appreciate that the appellant has given the statements under duress and pressure, therefore, the same does not have any evidentiary value.

8) That on the facts and circumstances of the case and in law, the Ld. CIT(A) failed to appreciate that the statement of Appellant recorded u/s 132(4) does not have any evidentiary value since it can be proved from the facts that the cash belongs to a someone else i.e. M/s Mumbai Wines and Trades Pvt. Ltd.

9) That on the facts and circumstances of the case and in law, the Ld. CIT(A) failed to appreciate that the statements recorded u/s 131 of the Act does not have any evidentiary value.

10) That the appellant craves leaves to add, alter or delete all or any of the grounds of appeal.

3. The Brief facts of the case are that, the assessee is engaged in liquor business and also director in companies. The assessee derives income from salary, income from business and income from other sources. The assessee has filed the return of income for the A.Y2020-21 on 15.01.2021 disclosing a total income of Rs.1.07.19.820/-. Whereas in the search operations conducted on the assessee in the F.Y.2019-20, cash of Rs.65 Lakhs was found and was seized during the search proceedings. The case was selected for scrutiny and notice u/sec 143(2) and u/sec 142(1) of the Act along with the questionnaire was issued. In compliance to the notice, the assessee has filed the submissions through e-proceedings in ITBA portal. The Assessing Officer (AO) dealt on the findings of the

search proceedings took place on 10.04.2019 and called the assessee to explain the sources of cash found vide notice u/sec 142(1) of the Act dated 08.03.2021, and the assessee has filed the details referred at Para 4.1 of the assessment order. Whereas the AO was not satisfied with the explanations and has dealt on the facts with respect to M/s Mumbai Wines & Trades Pvt Ltd, where the assessee is a director and the statement recorded u/sec 131 of the Act of the assessee and the assessee's brother on the ownership of the cash found in the search u/sec 132 of the Act. Finally the AO was not convinced on facts that the ownership of the cash found belong to M/s Mumbai Wine & Trades Pvt Ltd and has invoked the provisions of Sec.69A of the Act and made addition of Rs. 65 lakhs and assessed the total income of Rs.1,72,19,820/- and passed the order u/sec 143(3) of the Act dated 31.08.2021.

4. 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.

5. 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 information of the assessment proceedings. Further the assessee has a good case on merits and shall substantiate with the material evidences and prayed for an opportunity to explain before the lower authorities. Per Contra, the Ld.DR supported the order of the CIT(A).

6. 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 compliance nor appearance in spite of 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 Ld. CIT(A) has issued the notices of hearing referred at Page2 Para 5 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 addition u/sec69A of the Act by the A.O and there could be various reasons for non appearance which cannot be overruled. Therefore, considering the facts and principles of natural justice, we 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 submitting the information for early disposal of the Appeal. Accordingly, we allow the grounds of appeal of the assessee for statistical purposes.

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

Order pronounced in the open court on 15.05.2024.

Sd/-
(GIRISH AGRAWAL)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated: 15/05/2024

KRK.PS

Copy of the Order forwarded to:

1. The Appellant,
2. The Respondent
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,
(Dy./Asstt. Registrar)ITAT,

Mumbai