

**IN THE INCOME TAX APPELLATE TRIBUNAL “F” BENCH MUMBAI
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.4825/MUM/2023
Assessment Year: 2019-20**

Sarafathali Mohammed Hasana Lebbai 36/3, Haji Juma Compound, Sewri Cross Road, Sewri (W), Mumbai – 400 015 (PAN : ACEPL8172E)	Vs.	Deputy Commissioner of Income-tax, Circle 20(1), Mumbai
(Appellant)		(Respondent)

Present for:

Assessee : None
Revenue : Shri Rahul Kumar CIT,DR

Date of Hearing : 14.05.2024
Date of Pronouncement : 17.05.2024

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi, vide order no. ITBA/NFAC/S/250/2023-24/1057517050(1), dated 30.10.2023, passed against the assessment order by National Faceless Assessment Centre, Delhi, u/s.147 r.w.s. 144 r.w.s.144B of the Income-tax Act, 1961 (hereinafter referred to as the “Act”), dated 24.03.2022 for AY 2019-20.

2. Grounds taken by the assessee are reproduced as under:

1. **Assessing the total income at Rs 56,82,54,922 instead of Rs 1,14,67,050**

1.1. *On the facts and in the circumstances of the case, the CIT(A) erred confirming the total income of the Appellant at Rs 56,82,54,922 instead of Rs 1,14,67,050 as per return of income.*

2. **Reassessment proceedings bad in law**

2.1. *On the facts and in the circumstances of the case and in law, the CIT(A) erred in upholding reopening the assessment under section 147 of the Income-tax Act, 1961 ('the Act'). The reassessment order issued by the AO is bad in law and should be quashed. 2.2. On the facts and in the circumstances of the case and in law, the CIT(A) erred in upholding reopening the assessment on the suspicious transaction without having proof of the transaction is bad in law.*

3. **Ex-parte order**

3.1. *On the facts and in the circumstances of the case and in law, the CIT(A) erred in passing the ex-parte order under section 144 of the Act without considering the adjournment application. 3.2. On the facts and in the circumstances of the case and in law, the CIT(A) erred in upholding the ex-parte assessment order passed under section 144 of the Act without considering the submission filed on 23 March 2022.*

4. **Addition of Rs 55,67,87,872 under section 69C of the Act**

4.1. *On the facts and in the circumstances of the case and in law, the CIT(A) erred upholding the addition of Rs 55,67,87,872 as unexplained expenditure under section 69C of the Act in respect of alleged out of books purchases by the Appellant. 4.2. Without prejudice to the above, on the facts and in the circumstances of the case and in law, the CIT(A) erred confirming the application of provisions of section 69C of the Act as there is no out of books purchases.*

5. **Charging interest of Rs 5,21,44,079 under section 234A of the Act**

5.1. *On the facts and in the circumstances of the case, the CIT(A) erred in not adjudicating ground on charging interest of Rs 5,21,44,079 under section 234A of the Act.*

6. **Charging interest of Rs 15,66,68,755 under section 234B of the Act**

6.1. *On the facts and in the circumstances of the case, the CIT(A) erred in not adjudicating ground on charging interest of Rs 15,66,68,755 under section 234B of the Act.*

3. Brief facts of the case as culled out from records are that the assessee is engaged in the business of export of fish and other marine products including inter alia "shark fins" since 2005. Assessee filed his return of income on 31.10.2019 reporting total income at Rs. 1,14,67,050/-. Subsequently, reassessment proceedings were carried out by issuing notice under section 148 of the Act dated 30.03.2021.

For recording reasons to believe, it was gathered that 8022.88 kgs. Of shark fins having value of Rs.55,67,87,872/- was seized from the assessee by the customs authorities. Against the notice u/s. 148, assessee did not file his return of income. Ld. AO issued notice u/s.142(1) on 17.08.2021 requiring to submit the relevant explanations. Assessee failed to comply the same. Thus, Assessing Officer completed the assessment by passing an *ex parte* order dated 24.03.2022 under section 147 r.w.s 144 r.w.s 144B of the Act, assessing total income at Rs 56,82,54,922/-.

3.1 Aggrieved, assessee went in appeal before the ld. CIT(A).

4. From the perusal of the impugned order of the CIT(A), it is noted that appeal of the assessee is dismissed for lack of prosecution. In the said order, ld. CIT(A) noted that notices were issued to the assessee from time to time, however, no response was received from the assessee nor any adjournments were sought. According to him, assessee failed to avail these numerous opportunities, hence appeal was dismissed. Aggrieved, assessee is in appeal in before the Tribunal.

5. Before us, none appeared to represent the assessee. From the perusal of the orders of the authorities below, we note that assessee has not made any representation for his case and the orders have been passed *ex parte* despite several opportunities given to him. Even before us, there is no one to represent him. Accordingly, looking at the conduct at the assessee at all these stages, we are inclined to take up the matter for adjudication *ex parte qua* the assessee, with the assistance of ld. Sr.DR and considering the material available on record and orders of authorities below.

5.1. From the perusal of the order of ld. CIT(A), we note that it has been passed by observing that assessee is not interested in pursuing his appeal. However, from the statement of facts on record, we note

that assessee is a proprietor of M/s. Global Impex Trading, engaged in the business of export of fish and other marine products including inter alia “shark fins” since year 2005. Considering this fact on record, we are inclined to afford one more opportunity to the assessee to represent his case, by remitting the matter back to the file of Id. CIT(A) for *denovo* meritorious adjudication. We direct the Id. CIT(A) to provide reasonable opportunities to the assessee for making his submissions and also call for remand report from the Assessing Officer, if so required. We direct the assessee also, to be diligent in attending the hearings fixed for the appeal and assist in its expeditious and effective disposal. Assessee should not seek adjournments unless warranted by compelling reasons.

5.2. While remitting the matter back to the file of Id. CIT(A), we take note of Section 250 of the Act which provides for procedure to be adopted while disposing of the appeal by the Ld. CIT(A). Sub-section (4) of section 250 of the Act provides that the Ld. CIT(A) may, before disposing of any appeal, make such further inquiry as he thinks fit, or may direct the Assessing officer to make further inquiry and report the result of the same to the Commissioner (Appeals). Further, sub-section (6) provides that the CIT(A) shall pass an order in writing and shall set the points for determination, the decision thereon and the reasons for the decision. Keeping in mind the provision of section 250 of the Act, it is incumbent upon the Ld. CIT(A) to pass a speaking order on the merits of the case by examining, verifying and analyzing the material on record.

5.3. Since the matter is restored to the file of Ld. CIT(A) for meritorious adjudication by passing a speaking order in terms of our observations made hereinabove, we are not expressing any views on the merits of the case so as to limit the appellate procedure before the Ld. CIT(A). The observations herein, made by us in remanding the

matter back to the file of Ld. CIT(A) will not impair or injure the case of the Revenue nor will it cause any prejudice to the defense/explanation of the assessee.

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

Order is pronounced in the open court on 17th May, 2024.

Sd/-
(Pavan Kumar Gadale)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 17th May, 2024

MP, Sr.P.S.

Copy to :

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai