

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'E' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER**

**ITA No. 4852 & 4849/MUM/2023
(Assessment Year :2018-19)**

Kamal Parshuram Singh G-26, Ground Floor, 10/21, Flox Chamber, Tata Road No. 1, Roxy Cinema, Opera House, Girgaon, Mumbai - 400004	Vs.	Assessing Officer National E-Assessment Centre, Delhi
PAN/GIR No. GUWPS3065K		
(Appellant)	..	(Respondent)

Assessee by	Shri R.K. Jhunjunwala
Revenue by	Shri P.D. Chougule (Addl.CIT) SR DR
Date of Hearing	13/05/2024
Date of Pronouncement	17/05/2024

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the assessee against two separate order dated 11/12/2023, passed by Ld. CIT(A) - 53, Mumbai, 1 for the quantum of assessment passed u/s. 144 and another against penalty proceeding u/s 271AAC for the assessment year 2018-19.

2. In the quantum appeal assessee has challenged addition of Rs. 920,90,65,165/- made u/s. 69C r.w.s. 115BBE made by the AO on entire purchase as disclosed in the audited profit and loss account. In the penalty appeal assessee has challenged levy of penalty of Rs. 71,14,42,197/- at the rate of 10% of tax payable on addition sustained u/s. 69C of Rs. 920,90,65,165/-.

3. At the outset Ld. Counsel for the assessee submitted that both assessment order as well as CIT order has been passed ex-parte. The assessee could not attained the assessment proceeding which has been highlighted in the affidavit filed by the assessee, which for the sake of ready reference is reproduced here under:-

"I, Kamal Parshuram Singh having my place of business situated at G-26, Ground Floor, 10/21, Flox Chamber, Tata Road No.1, Opera House, Girgaon, Mumbai 400004 do hereby declare on solemn affirmation as under:-

1. THAT, I am assessed to Income Tax under the jurisdiction of Asst. Commissioner of Income Tax, Central Circle-5(2), Mumbai on holding PAN - GUWPS3065K;

2. THAT, I could not attend the assessment proceeding related to Assessment year 2018-19 under the bonafide reasons that the notice of hearing were issued during Covid-19 pandemic period between 19/12/2020 to 22/03/2021. Due to Covid-19 pandemic, my office premise was completely closed and I had gone to my home town situated at Hathras, Uttar Pradesh and due to my non- availability, the relevant details/documents could not be filed on record and thus the assessment order was passed ex-parte u/s 144 on making the huge addition u/s.69C r.w.s.115BBE of entire purchases disclosed in audited P & L of Rs. 920.90 crores;

3.THAT, I even could not attend the 1st Appeal proceeding and could not furnish the submissions and documents before

Ld. CIT(A) under the bonafide reasons and compelling circumstances beyond my control, stated as under:-

a) The notices of hearing were issued during the period from 05/09/2023 to 17/11/2023, however such notices were not served to me, since were sent at email address of my earlier Chartered Accountant and physical copies of such notices were also not served to me;

b) A survey action u/s.133A was conducted at my premise on 15/02/2022 and thereafter, the notice u/s.148 was issued on 06/04/2022. The investigation and assessing authorities alleged that I am engaged in the business of providing accommodation entries and entire purchase, sales, loans and other transactions recorded in my books of accounts are non-genuine and in nature of accommodation entries. The Ld. AO further held that my entire accommodation transactions are managed and controlled by an entry provider named Shri Ashwin Kumar Mali and accordingly, Ld. AO, in the reassessment order passed u/s.147 on 11/03/2024, had estimated the commission income on accommodation transactions of Rs.1,53,82,408/- in hands of Shri Ashwin Kumar Mali on 'Substantive basis' and correspondingly made the same addition in my hands on 'Protective basis'.

I was under a bonafide belief that the assessment and appeal proceeding shall abate and remain pending and shall get merged in the search/survey assessment and accordingly, I could not furnish the submissions and documents before the Ld. CIT(A);

c) Due to investigation conducted by the GST Authorities on 11/09/2023, I was extremely disturbed and was in mental state of mind depression, Further, did not have access to my books of accounts, bills, etc and therefore, could not file the relevant details/ documents before the Ld. CIT(A);

d) I was extremely disturbed and was in state of depression, due to multiple ongoing investigations and charges framed against me and since I am an uneducated senior citizen and not maintaining good health and am not aware of Income Tax laws, thus could not file the relevant details/ documents before the Ld. CIT(A);

4.THAT, I declare that there is no willful or deliberate attempt nor any gross negligence for my non-compliance during the assessment and 1st appeal proceedings, however such had occurred under the bonafide reasons as stated herein above.”

4. The Ld. Counsel further pointed out that the present assessment order has become infructuous, because for the same assessment year 2018-19 order u/s. 148(A) has been passed by taking into account entire purchase and sales and income has been assessed for A.Y. 2018-19 at Rs. 27,93,432/-, by estimating commission at the rate of 0.5% of the total sales and purchases of the year and at the rate of 3% of total loans and advances outstanding during the year. He further pointed out that assessee has been treated to be conduit for an entry provider Shri Ashwin Kumar Mali wherein substantive addition has been made on account of the same very addition and protective in the hands of the assessee.

5. On the other hand Ld. DR submitted that since it is an ex-parte order and also this the subsequent assessment order dated 06/04/2022 passed u/s. 148(A) for the same assessment year therefore, this appeal should be restored back to the file of the AO to decide accordingly.

6. After considering the impugned order passed by AO and CIT(A), is seen that, *firstly*, it is in ex-parte order and *secondly*, AO has taxed the entire purchases shown in the audited profit and loss account, simply because assessee could not appear before the AO. He has not even taken into consideration the corresponding sales and if the entire purchases have been added

then how he has treated the sales in the same trading account has not been commented upon. Even if it is ex-parte order u/s. 144, then we failed to understand how entire purchases can be added and thereby making an assessment of Rs. 920.91 crores and creating a demand and interest of more than Rs. 988.85 crores.

6. Even the Ld. CIT(A) in its ex-parte order has simply endorsed vide order dated 11/12/2023, without even calling for the report that one and half year ago, already order u/s. 148(A) has been passed where assessed income has been taken by applying some commission rate on total sales and purchases. Even if it is an ex-parte order, it is not expected from the appellate authority to confirm such a high pitched assessment order without application of mind.

7. As noted above, after the passing of the assessment order on 16/04/2021, there was survey action u/s. 133(A) on 15/02/2022 and notice u/s. 148 was issued to the assessee on 06/04/2022. In reassessment order income has been assessed by taking on commission rate of 0.5% on the same trading account and in fact substantive addition has been made in the hands of Shri Ashwin Kumar Mali and addition has been made on protective basis in the case of the assessee. Thus, in light of subsequent order, this quantum appeal is set aside to the file of the AO with the direction that, if already the assessment in the case of the assessee for the same assessment year has been passed on same trading account, then this assessment order will have no legs to stand. The AO thus in light of subsequent events

and the subsequent orders shall decide the fate of this original assessment order, as prima facie it is not sustainable.

8. In so far as penalty appeal is concerned on same quantum of amount, since the quantum appeal have been set aside, therefore, the penalty order itself does not stand. Accordingly this appeal is also remanded back to the file of the AO.

9. Thus, both the appeals of the assessee are allowed for statistical purposes.

Order pronounced on 17th May, 2024.

Sd/-
(RATNESH NANDAN SAHAY)
ACCOUNTANT MEMBER

Mumbai; Dated 17/05/2024

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

POONAM MIRASHI
Stenographer

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai