

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

**SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER
AND
BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER**

**ITA No.3832/M/2023
Assessment Year: 2012-13**

Shri Jignesh Suresh Shah, 202, Above Ambica Gas, Chandra Nagar, Masoli Dahanu Road, Main Road, Dahanu, Palghar, Maharashtra - 401602 PAN: AXMPS0601E (Appellant)	Vs.	National Faceless Assessment Centre (NFAC), Income Tax Department, Ward-1, BIDCO Road, Palghar- 401404 (Respondent)
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Present for:

Assessee by : None
Revenue by : Ms. Rajeshwari Menon, Sr. DR.

Date of Hearing : 02 . 05 . 2024
Date of Pronouncement : 27.05. 2024

O R D E R

Per : Narender Kumar Choudhry, Judicial Member:

This appeal has been preferred by the assessee against the order dated 28.08.2023, impugned herein, passed by the National Faceless Appeal Center (NFAC)/ Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) under section 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2012-13.

2. In the instant case, the assessee had declared his total income of Rs.1,26,147/- against the gross receipts of Rs.6,73,946/- by filing his original return of income on 30.03.2013. Subsequently, the case of the assessee was reopened under section 147 of the Act on the basis of information received from the investigation wing of the Revenue Department and consequently notice under section 148 of

the Act dated 28.03.2019 was issued to the assessee, in response to which the assessee filed his return of income whereby the assessee revised his total sales turnover/gross receipts to a whopping of Rs.2,16,41,600/- as against Rs.6,73,946/- shown in the original return of income. However, the assessee had reduced his income as revised in the return of income to the tune of Rs.8,350/- as against Rs.1,26,147/- as declared in the original return of income. Consequently, the Assessing Officer (AO) asked the assessee to produce copy of ledger accounts of purchases, along with the names and addresses of the parties from whom purchases have been made along with month wise details of purchase & sales and other supporting evidence. Somehow the assessee made no compliance and therefore the entire alleged purchases amounting to Rs.2,12,92,288/- has been added to the total income of the assessee under section 69C of the Act.

2.1 The AO also treated the amount of Rs.24,09,000/- as unexplained on account of deposits made by the assessee in his bank accounts and consequently added the same in the total income of the assessee under section 69A of the Act.

2.2 In effect, the assessment of the assessee was completed at an assessed income of Rs.2,37,09,640/- vide assessment order dated 26.11.2019 under section 143(3) r.w.s. 147 of the Act, whereby the additions of Rs.2,12,92,288/- and Rs.24,09,000/- have been made respectively under section 69C & 69A of the Act.

3. The AO in the assessment order also observed that total sales turnover/gross receipts as revised by the assessee to the tune of Rs.2,16,41,600/- as declared in the ITR filed, in response to notice under section 148 of the Act, exceeds the turnover limit of Rs.1,00,00,000/- as prescribed under section 44AA and 44AB of the Act for the year under consideration and consequently the AO

initiated the penalty proceedings under section 271B of the Act and vide notice dated 26.11.2019 show caused the assessee.

3.1 In response to the said show cause notice, the assessee neither filed any reply nor sought any adjournment and therefore the AO in the constrained circumstances by observing that the assessee could not satisfactorily explain as to why the penalty under section 271B of the Act may not be imposed in this case, imposed the penalty of Rs.1,08,210/- @ 0.5% of the turnover of Rs.2,16,41,600/-.

4 The assessee, being aggrieved, challenged the levy of penalty before the Ld. Commissioner, however, as it appears from the impugned order, he failed to prove with necessary evidence that there was sufficient and reasonable cause for not getting its accounts audited under section 44AB of the Act. Consequently the Ld. Commissioner affirmed the levy of penalty.

5. The assessee, being aggrieved, is in appeal before us.

6. Heard the parties and perused the material available on record. The assessee in order to substantiate its claim, has filed various documents vis-à-vis its reply and the judgments rendered by Hon'ble co-ordinate Benches of the Tribunal. We have considered the same. As the assessee before both the authorities below failed to produce the relevant reply/documents in order to substantiate its claim and made the Ld. Commissioner helpless to decide the issue involved in its right perspective and proper manner and therefore the Assessee is not entitled for leniency, however for the just decision of the case and for the substantiate justice and taking this case as exception, we are inclined to afford one more opportunity to the assessee to substantiate its claim before the Ld. Commissioner, hence, the case is remanded to the file of the Ld. Commissioner, suffice to say by affording reasonable opportunity to the assessee to substantiate its claim.

The assessee is also directed to comply with the notices and cooperate with the appellate proceedings before the Ld. Commissioner and file the relevant reply/submission/documents as would be essential/required for proper adjudication of the appeal of the assessee by the Ld. Commissioner. In case of further default, the assessee shall not be entitled for any leniency.

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

Order pronounced in the open court on 27.05.2024.

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

**Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER**

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.