

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH MUMBAI
BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIALMEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

ITA No.452/MUM/2024
Assessment Year: 2017-18

Ram Vasdev Bathija Shop 19, C/o. Diamond Jewellers, Mirchi Galli, Opp. Jumma Masjid, Mumbai – 400 002 (PAN : AACPB2056P)	Vs.	Assistant Commissioner of Income Tax, Circle 23(3), Mumbai
(Appellant)		(Respondent)

Present for:

Assessee : Shri.Ashwin Jain, CA
Revenue : Smt. Mahita Nair, Sr.DR

Date of Hearing : 03.06.2024
Date of Pronouncement : 05.06.2024

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/250/2023-24/1058512833(1), dated 06.12.2023 passed against the assessment order by the Assistant Commissioner of Income Tax, Circle 23(3), Mumbai, u/s. 143(3) of the Income-tax Act(hereinafter referred to as the “Act”), dated 23.12.2019 for Assessment Year 2017-18.

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

“Ground 1:

The order passed u/s 250 of Income tax Act, 1961 by the L.d. CIT (A) is against law and facts on in as much he was not justified to uphold the action of learned Assessing officer in making addition of Rs.1,50,00,000/-.

Ground 2:

The CIT (A) has erred in considering that Assessing officer passed order without issuing show cause notice and there by not giving enough opportunity of being heard before passing impugned order which clearly violated principal of natural justice,

Ground 3:

The CIT (A) has erred in taking in record facts that assessee has made declaration under income declaration scheme and having intention to pay the same as per the norms of IDS scheme. However due to the scarcity of the funds, assessee has not paid tax due thereon.

Ground 4:

The L.d. CIT (A) erred in passing order as survey was conducted u/s 131, so case need to transferred to central circle and not by jurisdictional officer.

Ground 5:

The L.d. CIT (A) erred in confirming to the addition u/s 68 made by Assessing Officer as after search, assessment cannot be done faceless as it is in exceptions of faceless assessment scheme and need to be done by manually.

Ground 6:

The CIT (A) erred in stating that there is total non-compliance on the part of Appellant during the appeal proceedings, without knowing fact that Appellant could not present the appeal because of his health was unwell and sad demise of his wife so he could not reply against the notice issued by the L.d. CIT (A).

Ground 7:

The L.d. CIT (A) erred in not considering the fact and circumstances of the case and levying interest under 234A and u/s 234B of the Income Tax Act, 1961.

Ground 8:

The L.d. CIT (A) erred in not considering the fact and circumstances of the case and initiating penalty proceedings u/s 270 AAC of the Income Tax Act, 1961.

Being aggrieved by the said CIT (A) order of dismissing the appeal without considering the submission made; the Appellant hereby prefers this appeal before your Honour.”

2.1. At the outset, we note that by ground no.2, assessee has contested that enough opportunity of being heard was not given to him before passing the impugned order which is in violation of principles of natural justice. In this respect, we perused the order of CIT(A) and note that it has been passed *ex-parte*, in absence of any submissions or explanations and documentary evidences by the assessee to rebutte the findings arrived at by the ld. Assessing Officer by making the addition.

3. Brief facts on record are that, assessee filed his return of income on 02.11.2017, reporting total income at Rs.22.84,410/-. Ld. Assessing Officer records in para 2 of the impugned order that notices u/s.142(1) were issued asking details from the assessee. In response to such notices, the assessee provided the details through e-proceedings. The assessment was completed by making the addition of Rs.1,50,00,000/- in respect of declaration made by the assessee in the course of survey action conducted at the premises of the assessee, wherein under the statement recorded on oath, assessee had assured to declare the said sum under income disclosure scheme and pay tax thereon. Since, assessee did not make payment of tax on the said amount, it was added to the total income as un-explained cash credit.

4. In the course of first appellate proceedings, several notices were issued for hearing in case of the assessee, which remained un-complied and appeal of the assessee was dismissed *ex-parte*.

5. Before us, ld. Counsel for the assessee specifically referred to ground no. 2 raised before us, whereby the first appeal has been dismissed *ex-parte* without considering the grounds, statement of facts and material on record. He referred to para 2 of the order of ld. Assessing Officer to point out that submissions were made in the course of assessment proceedings which ought to have been taken into account even if the appeal was disposed off *ex-parte*.

5.1. It was thus submitted that the matter may be remanded back to the file of ld. CIT(A) for *denovo* meritorious adjudication by taking into consideration the submissions already on record. It was also prayed that reasonable opportunities may be given to the assessee to make any further submissions, if so required.

6. Per contra, ld. Sr.DR raised no objection on the prayer made by the ld. Counsel.

7. We have heard the rival contentions and perused the material on record. At the first appellate stage, there are lapses on the part of the assessee to attend the hearings for an effective and meritorious disposal of its appeal. Also, ld. CIT(A) has dismissed the appeal for lack of prosecution.

7.1. Section 250 of the Act 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 sections 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 analysing the material on record.

7.2. Considering the prayer made before us, in the interest of justice and fair play, we find it appropriate to remit the matter back to the file of ld. CIT(A) for *denovo* meritorious adjudication on the grounds of the appeal taken at the first appellate stage. We also direct the assessee to be diligent and cooperative in attending the hearings and make his submissions for expeditious and effective disposal of the appeal. He

should not seek adjournments unless warranted by compelling reasons.

7.3. 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.

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

Order is pronounced in the open court on 05 June, 2024

Sd/-
(Narender Kumar Choudhry)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 05 June, 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