

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

**BEFORE: SHRI GAGAN GOYAL, ACCOUNTANT MEMBER
&
SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER**

**ITA No. 673/MUM/2024
(Assessment Year : 2012-13)**

Pratik Jatin Desai 28/29, Vimla Mahal, 755 Peddar road, Opp. Jaslok Hospital, Mumbai-400026.	Vs.	Assistant Commissioner of Income tax-19(1) Mumbai-400026
PAN/GIR No. AACPP2357B		
(Appellant)	..	(Respondent)

Assessee by	Shri. Ajay Tulsiyan
Revenue by	Shri H.M. Bhatt (SR. DR.)
Date of Hearing	03/06/2024
Date of Pronouncement	20/06/2024

आदेश / O R D E R

PER SUNIL KUMAR SINGH (J.M):

1. This appeal has been preferred against the impugned order dated 14.12.2023 passed in Appeal no. CIT(A)30, Mumbai/11018/2019-20 by the Ld. Commissioner of Income-tax(Appeals), National Faceless Appeal Centre(NFAC) [hereinafter referred to as the "CIT(A)"] u/s. 250 of the Income-tax Act, 1961 [hereinafter referred to as "Act"] for the Assessment year [A.Y.] 2012-13, wherein learned CIT(A) has dismissed assessee's appeal upholding

the addition made by Assessing Officer vide assessment order dated 28.12.2019.

2. The brief facts related to the appeal state that assessee filed his original return of income on 29.08.2012 declaring his total income at Rs. 6,48,260/- which was processed u/s. 143(1) of the Act. An information was received from the office of DDIT(Inv.) unit-6(3) Mumbai that the assessee has misused and manipulated the client code modification facility for the purpose of tax evasion. Assessing Officer found that income chargeable to tax has escaped assessment, and the case of the assessee was reopened after recording the reasons and after taking statutory approval from the principal CIT-19 Mumbai, notice u/s. 148 of the Act was issued and served upon the assessee. In response there of, the assessee furnished his return of income on 30.04.2019 declaring same total income of Rs. 6,48,260/-. Subsequently, statutory notice u/s. 143(2) and 142(1) were issued and served upon the assessee. The statement of the assessee u/s.131 was also recorded. Further show cause notice was issued to assessee. After considering the submissions of the assessee, an unexplained cash credit of Rs. 94,34,800/- was added u/s. 68 of the Act in the total income of the assessee, assessing total income of the assessee at Rs. 1,00,83,060/- for the A.Y.2012-13. Assessing Officer also initiated penalty proceedings u/s. 271(1)(C) of the Act for furnishing inaccurate particulars of income. Aggrieved by the assessment order, assessee preferred an appeal before

learned CIT(A), who dismissed the appeal appeal upholding the addition made by Assessing Officer.

3. The appellant assessee has approached this tribunal on the following grounds:

“1. That the Learned CIT(A) erred in dismissing the appeal of the assessee for non prosecution and thereby confirming the addition made by the Ld Assessing Officer. That on the facts and in the circumstances of the case the said dismissal of appeal is wrong and bad in law and it is prayed that the order of the Ld. CIT(A) may very kindly be set aside.

1.1. As an alternate and without prejudice to above it is prayed that the Ld. CIT(A) may very kindly be directed to give another opportunity to the assessee and pass the order on merits of the case.

2. That the Ld. CIT(A) erred in law and facts in upholding the action of Learned AO of reopening the assessment u/s 148. On the facts and in the circumstances of the case the reopening of assessment u/s 148 is wrong and uncalled for.

3. That the Ld. CIT(A) erred in law and facts in upholding the addition of a sum of Rs. 94,34,800/- made u/s 68 of The Income Tax Act, 1961 on account of manipulation of client code modification facility. On the facts and in the circumstances of the case the addition made u/s 68 is wrong and uncalled for and is prayed to be deleted.....”

4. In response to the notice issued by the tribunal, learned DR appeared and participated in the proceedings.

5. We have perused the records and heard learned representative for both the parties.

6. Learned representative for the assessee has submitted to condone the delay for two days in filing this appeal on 14.02.2024 against the impugned order dated 14.12.2023. Further submitted that learned CIT(A) has wrongly added Rs. 94,34,800/- u/s. 68 of the Act. Further, stating that learned CIT(A) has passed impugned order ex-parte without affording sufficient opportunity to the assessee and requested to direct learned CIT(A) for affording an

opportunity of hearing to the assessee before passing order on the merit afresh.

7. Learned DR has opposed assessee's delay condonation request and supported the impugned order.
8. Considering the request of assessee for the condonation of 02 days delay in filing the appeal, we deem it just and proper in the interest of justice to condone the said delay. The 02 days delay in filing this appeal stands condoned.
9. We find that learned CIT(A), in para 6 of the impugned order, has mentioned that despite communication on six occasions, the assessee did not respond. It was further stated that the appellant was not interested in pursuing his appeal in any productive manner, hence, the appeal was dismissed in absentia. We are conscious of the fact, that assessee has not turned up before the first appellate authority in response to the aforesaid notices issued on various occasions. However, in the interest of justice and fair play, we deem it appropriate to remit the matter back to the file of learned CIT(A) for denovo adjudication on merit. We direct the assessee to be diligent and cooperative in attending the hearings and making submissions before the first appellate authority for the expeditious and

effective disposal of the appeal. Assessee should refrain from seeking any adjournment but for compelling and unavoidable reasons. Needless to say that learned CIT(A) shall ensure the observance of the principles of natural justice. It is made clear that we have not made any observations on the merits of the case. The appeal is thus liable to be allowed accordingly.

10. In the result, the appeal is thus allowed in above terms. Impugned order dated 14.12.2023 is set aside. The appeal is restored back to the file of the learned CIT(A) for statistical purpose.

Order pronounced on 20.06.2024.

Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER
Mumbai; Dated 20/06/2024
Anandi Nambi, *Steno*

Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER

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