

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BENGALURU “C” BENCH, BENGALURU**

**Before Shri Chandra Poojari, Accountant Member  
and  
Shri Soundararajan K. Judicial Member**

<b>ITA No. 744/Bang/2024</b> (Assessment Year:2012-13)		
Vikram Jain No.-21, Bettappa Lane Nagrathpet Cross Bangalore 560002 PAN – ACOPI5692D	vs.	The Income Tax Officer Ward - 5(2)(5) Bangalore
(Appellant)		(Respondent)

Assessee by:	Smt. Sheetal Borker, Advocate
Revenue by:	Shri V. Parithivel, JCIT-DR

Date of hearing:	03.06.2024
Date of pronouncement:	19.06.2024

**ORDER**

**Per: Soundararajan K., J.M.**

This is an appeal by the assessee challenging the order passed by the National Faceless Appeal Centre, Delhi (‘CIT(A)’) dated 27.02.2024 under Section 250 of the Income Tax Act, 1961 (the Act) in respect of Assessment Year (AY) 2012-13.

2. The brief facts of the case are that the assessee is carrying on the business of FMGG products of Reckitt & Colman India under the name and style of M/s. Merlecha Agencies. During the AY 2012-13 the ld. Assessing Officer (AO) passed an ex-parte best judgement order under Section 144 r.w.s. 147 of the Act for the reason that the assessee has not filed his return of income and in spite of several notices issued to him, he has not responded to any of the notices. The assessee challenged the said order of the AO before the

learned CIT(A) and submitted that he has not received any of the notices and received only the show cause notice and immediately filed the return of income on 20.11.2019 vide acknowledgement No. 258476301201119. The assessee further contended that treating the cash deposits made in assessee's bank account as unexplained money under Section 69A of the Act is not correct. The CIT(A) dismissed the appeal ex-parte for the non appearance of the assessee. Aggrieved assessee is in appeal before us on the following grounds of appeal”

- “1. The learned CIT(A) erred in passing the order in the manner he did.*
  - 2. The Learned CIT(A) ought to have appreciate that none of the notices which were mandatorily in nature were served on the assessee by the assessing officer before passing the assessment order and hence the assessment is bad in law.*
  - 3. The ld. CIT(A) ought to have appreciate that the email id was of the old auditor who did not inform about the notices to the assessee. Hence assessee could not reply to the notices.*
  - 4. The learned CIT(A) failed to appreciate that all the cash deposited by the assessee where either out of saving or out of his business run by the assessee, hence there is no unexplained money as assessed by the assessing officer to make addition under section 69A.*
  - 5. The Id. CIT(A) ought to have appreciate that provision of sec. 69A is not applicable in his case since there is no unexplained money.*
  - 6. The learned CIT(A) further ought to have appreciated that all audited accounts were already available in the portal of income tax department for their ready reference, hence he ought to have verified and deleted the same.*
  - 7. Without prejudice, the impugned additions are excessively arbitrary and unreasonable and liable to be deleted in full.*
  - 8. For these and such other grounds that may be urged at the time of hearing the appellant prays that the appeal may be allowed.”*
3. At the time of hearing the learned A.R. of the assessee submitted that no notice was served on the assessee by the AO and only he has received the show cause notice and there after the return of income in ITR 4 was filed

whereas the AO has observed that the assessee has not filed his return of income and also not filed any objection to the show cause notice, which is not correct. The learned A.R. further submitted that the notices issued by the learned CIT(A) was sent to the email ID of the old auditor and he has not informed about the same and therefore the assessee was not able to appear before the CIT(A). The learned A.R. also filed a paper book which contains a copy of the return of income and an application for filing additional documents through pen drive. In the application for filing additional documents the assessee contended that the documents furnished in the pen drive were not produced before the authorities and therefore prayed that the same may be admitted and on that basis the matter may be decided.

4. The learned D.R., on the other hand, relied on the orders of the lower authorities and prayed for dismissal of the same.

5. We have heard the rival contentions and perused the materials on record. We have perused the copy of the return available in the paper book with an acknowledgement and found that the assessee had filed his return of income but the AO had failed to consider the same. We find that the other contention that the hearing notices issued by the CIT(A) were sent to the email ID of the old auditor and the Auditor has not communicated the same to the assessee and therefore they did not appear before the CIT(A) also is an acceptable one. We satisfied that the non appearance by the assessee is neither wilful nor wanton. Further we have gone through the application filed by the assessee for admitting the additional documents copied in the pen drive and found that it contains the statement of accounts maintained by the assessee in the Bank of Maharashtra for the period from April, 2011 to March, 2012 and the month-wise sales made in cash and cheque and invoices-wise VAT sales for the whole year and accepted the same since they are nothing but the regular records maintained during the course of business and the same were

not produced before the Ld AO in support of the return of income filed by him. The assessee also reported a net loss of Rs.2,12,841/- in the return of income filed by him but the same was not adjudicated by any of the authorities. Keeping in mind that the AO has passed a best judgement assessment under Section 144 of the Act and the order of the CIT(A) is an ex-parte order, we are of the opinion that one more opportunity is to be granted to the assessee to produce all the documents and other records in support of his return of income filed. We, therefore, set aside the orders of the lower authorities and remand the matter back to the file of the AO for deciding the issue afresh after granting an opportunity of hearing to the assessee.

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

Order pronounced in the open Court on 19<sup>th</sup> June, 2024.

Sd/-  
**(Chandra Poojari)**  
**Accountant Member**

Sd/-  
**(Soundararajan K.)**  
**Judicial Member**

Bengaluru, Dated: 19<sup>th</sup> June, 2024  
n.p.

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT, concerned*
4. *The DR, ITAT, Bengaluru*
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*By Order*

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*Assistant Registrar*  
*ITAT, Bengaluru*