

**IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, MUMBAI**

**BEFORE MS KAVITHA RAJAGOPAL, JM AND  
SHRI GIRISH AGRAWAL, AM**

ITA No. 2667/Mum/2015  
(Assessment Year: 2010-11)

Hajaram Purohit Shop No. 8, Building No. 33, Ganesh Bhuvan, 3 <sup>rd</sup> Khetwadi Lane, Mumbai-400 004	Vs.	DCIT-36 Mumbai
PAN/GIR No. AGUPP 6813 F		
(Assessee)	:	(Respondent)
<b>Assessee by</b>	:	Shri Viraj Mehta
<b>Respondent by</b>	:	Smt. Mahita Nair
<b>Date of Hearing</b>	:	20.06.2024
<b>Date of Pronouncement</b>	:	26.06.2024

**ORDER**

**Per Kavitha Rajagopal, JM:**

This appeal has been filed by the assessee, challenging the *ex parte* order of the learned Commissioner of Income Tax (Appeals) – 41, Mumbai passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2010-11.

2. The assessee's has raised the following grounds of appeal:

1. *The ld. Commissioner of Income Tax (Appeals) [hereinafter referred to as "Ld. CIT(A)] erred in upholding the order of the ld. Assessing Officer in adding Rs.41,26,872/- as undisclosed commission, not allowing claim of expenses & ignoring income already disclosed in the return of income without appreciating the facts and circumstances of the case.*
2. *The ld. Commissioner of Income Tax (Appeals) [hereinafter referred to as "Ld. CIT(A)] has erred in treating Deposit of Rs.2,40,72,871/- as unexplained money u/s. 69A of the Income tax Act, 1961.*

3. The appeal is time barred by 83 days and the assessee has filed an Affidavit for condoning the said delay. After hearing both the parties, we are of the considered opinion

that the assessee had 'sufficient cause' for the delay in filing the present appeal and we, therefore, deem it fit to condone the delay. Delay condoned.

4. The brief facts are that the assessee is an individual and is engaged in trading and stock of ferrous and non ferrous metals under the name of M/s. Rinku Steel Corporation and has filed his return of income on 29.09.2010, declaring total income at Rs.5,42,995/- and the same was processed u/s. 143(1) of the Act. The assessee's case was reopened u/s. 147 of the Act vide notice u/s. 148 of the Act dated 26.03.2012, pursuant to a survey action u/s. 133 of the Act dated 28.01.2011 on the business premises of the assessee. the learned Assessing Officer (ld. A.O. for short) observed that the assessee is one of the beneficiary of bogus purchases from various parties some of whom are accommodation entry providers alleged to be hawala operators as per the Sales Tax Department. The ld. A.O. then passed the assessment order dated 26.03.2013 u/s.143(3) r.w.s 147 of the Act, thereby determining the total income at Rs.2,87,42,740/- after making addition on undisclosed commission amounting to Rs.41,26,872/- and undisclosed deposits amounting to Rs.2,40,72,871/-

5. The assessee was in appeal before the first appellate authority, challenging the assessment order.

6. The ld. CIT(A) vide order dated 31.10.2014, upheld the order of the ld.A.O. for the reason that inspite of several opportunity the assessee has failed to substantiate his claim and has been non compliant.

7. The assessee is in appeal before us, challenging the impugned order of the ld. CIT(A).

8. We have heard the rival submissions and perused the materials available on record. It is observed that the assessee has challenged the additions made by the Id. A.O. before the first appellate authority but has been non compliant throughout the appellate proceeding.

9. The learned Authorised Representative ('Id. AR' for short) for the assessee contended that the assessee has got a good case on the merits and prayed that the assessee may be given one more opportunity to present his case before the Id. CIT(A).

10. The learned Departmental Representative ('Id.DR' for short) vehemently opposed to setting aside the issue to the file of the Id. CIT(A) for the reason that the assessee was given several opportunity by the Id. CIT(A) which was not availed by the assessee.

11. On the above factual matrix of the case, we are of the considered view that the assessee may be given one more opportunity to present his case before the first appellate authority by adhering to the principles of natural justice. We, therefore, remand all these issues back to the file of the Id. CIT(A) for *de novo* adjudication. The assessee is directed to comply with the proceedings without any undue delay on his side.

12. In the result, the appeal filed by the assessee is allowed for statistical purpose.

*Order pronounced in the open court on 26.06.2024.*

Sd/-

(Girish Agrawal)  
Accountant Member

Mumbai; Dated : 26.06.2024  
Roshani, Sr. PS

Sd/-

(Kavitha Rajagopal)  
Judicial Member

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent
3. CIT - concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt. Registrar)  
ITAT, Mumbai