

IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH MUMBAI

BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIALMEMBER

AND

SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

ITA No. 459/MUM/2024
Assessment Year: 2013-14

Rahul Ramesh Shelar Pitru Chhaya Sadan, Near Railway Station, Ward No.6, Vangani West, Thane, Maharashtra – 421503 PAN : ASBPS3128C	Vs.	Assistant Commissioner of Income Tax, Circle 2 2 nd Floor, Mohan Plaza Wayle Nagar, Khadakpada Kalyan (W), Mumbai - 421301
(Appellant)		(Respondent)

Present for:

Assessee : Shri Rajesh S. Shah, CA
Revenue : Smt. Mahita Nair, Sr. DR

Date of Hearing : 10.06.2024
Date of Pronouncement : 14.06.2024

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/250/2023-24/1059463451(1) dated 08.01.2024 passed against the assessment order by Assistant Commissioner of Income Tax, Circle 2, Kalyan, u/s.143(3) of the Income-tax Act, 1961 (hereinafter referred to as the "Act"), dated 21.03.2016 for AY 2013-14.

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

1. *“On the facts and circumstances of the case, CIT(A) erred in passing an order under Section 250 of the Act though the appellant had requested the hon'ble CIT(A) to keep the proceedings in abeyance till Form No.5 is received in respect of petition filed under Vivad Se Vishwas Scheme, 2020.*
2. *On the facts and circumstances of the case, CIT(A) erred in passing an order which may be set aside since the matter in respect of Vivad Se Vishwas Scheme, 2020 has not been accepted in the case of the appellant and the case is required to be decided on merit.*
3. *On the facts and circumstances of the case and in law, the CIT(A) erred in not considering the following grounds of appeal on merit and hence the appeal may be set aside.*
 - a) *The learned ACIT erred in rejecting books of accounts under Section 145(3) of the income tax act 1961.*
 - b) *The clerical mistake in the audited balance sheet and profit and loss account should be allowed to explain in detail and books should be relied upon.*
 - c) *The gross income on presumptive basis @ 8% of the gross receipt should be set aside in toto ab-initio and the books are audited and should be considered by disallowing the excess stock part or expenses as the books on the concept of materiality basis should be considered.*
 - d) *The gross income on presumptive basis @ 8% is ab- initio wrong as the learned ACIT taken the estimate on the basis of section 44AD which is not applicable to us as the turnover is above 40 lakhs of the assessee.*
 - e) *The gross income on presumptive basis @ 8% is ab- initio wrong as the learned ACIT has not considered the assessee's previous years net profit as the base for the best judgment assessment.*
 - f) *In view of above we hereby pray to set aside the order passed by the learned ACIT and consequential relief should be granted to us.”*

3. Brief facts of the case as culled out from records are that assessee is a Works Contractor providing PMC & Supervision Services to various Government and Non-Government agencies through its proprietary concerns. Assessee filed its return of income on 18.10.2013 wherein he had offered net profit of ₹.66,72,764/- on gross receipts from Civil

Construction & PMC services of ₹.15,56,73,070/- which comes to 4.28% of the gross receipts.

4. In the course of the assessment proceedings, Ld. Assessing Officer observed certain discrepancies in the financial statements furnished by the assessee and concluded that the books of accounts produced could not be relied upon. Ld. Assessing Officer rejected the books of accounts under section 145(3) of the Act and completed the assessment under section 144 of the Act by estimating the income on gross receipts @8% which comes to ₹.1,25,66,040/-. He gave credit of ₹.66,72,765/- which had been already offered by the assessee in his return.

5. Aggrieved, assessee went in appeal before the Ld. CIT(A). During the pendency of appeal before the Ld. CIT(A), assessee proceeded to take benefit under Vivad Se Vishwas Scheme, 2020 for which he had filed Form Nos. 1 and 2. To this effect, assessee made a submission before the Ld. CIT(A) on 29.01.2021 stating the he would like to withdraw the appeal since he has filed Form Nos. 1 and 2 under the said scheme and has received Form No. 3 against which taxes have been paid. He thus requested to allow him to withdraw the appeal. Subsequent to this, since the assessee could not receive Form No. 5 under the said scheme, he made another submission before the Ld.CIT(A) on 01.11.2022 stating that since he has not received Form No.5 therefore the proceedings in

the appeal may be kept in abeyance until Form No. 5 is received from the Department. However, Ld.CIT(A) passed the order on 08.01.2024 without taking into cognizance the submission made on 01.11.2022 and dismissed the appeal as infructuous without dealing into the merits of the case. While dismissing the appeal as infructuous Ld. CIT(A) referred to the first submission of the assessee on 29.01.2021 only.

6. Aggrieved, assessee is in appeal before the Tribunal contesting that even though the assessee had requested the Ld. CIT(A) to keep the proceedings in abeyance until the issue of Form No. 5 by the department, yet the appeal has been disposed off. In Ground No. 2 assessee has submitted that the matter may be set-aside to the file of the Ld. CIT(A) since the issue of Form No. 5 under the said scheme has not yet been settled and that the Ld. CIT(A) may decide the case on merits.

7. On confrontation of these facts to the Ld. Senior DR, nothing objectionable was submitted.

8. We have heard the rival contentions and gone through the submissions made before us. We note that the assessee had intimated the Ld. CIT(A) about the non-issuance of Form No. 5 under the said Scheme and to keep the matter in abeyance until the said issue is

settled with the department. Ld. CIT(A) has dismissed the first appeal as infructuous by resorting to the filing of Form Nos. 1 and 2 and issuance of Form No. 3 as intimated by the assessee through his first communication. Since the matter in respect of Vivad Se Vishwas Scheme, 2020 for issue of Form No. 5 has not been accepted in the case of the assessee and that Ld. CIT(A) has not decided the grounds of appeal raised before him on merits, we find it appropriate to remit the matter back to the file of Ld. CIT(A) for denovo meritorious adjudication of the grounds of appeal taken before him. Needless to say that assessee be given reasonable opportunity of being heard to represent his case. Accordingly, Ground Nos. 1 and 2 raised by the assessee before us are allowed for statistical purpose.

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

Order is pronounced in the open court on 14th June, 2024

Sd/-
(Narender Kumar Choudhry)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Mumbai/Dated: 14th June, 2024
Giridhar, Sr.P.S.

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, Mum