

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH MUMBAI

**BEFORE MS. KAVITHA RAJAGOPAL, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No. 977/MUM/2024
Assessment Year: 2012-13**

Monica Nirav Shah Room No. C, 112, Rushabh Apartment, Shanti Park, Jalambi Mandi, Bhayander (E), Thane, Maharashtra – 400101 (PAN : CFSPS5747B)	Vs.	Income Tax Officer – 2(5), Ashar IT Park, Thane
(Appellant)		(Respondent)

Present for:

Assessee : Shri Steve Pulikkoden, Advocate
Revenue : Smt. Mahita Nair, Sr. DR

Date of Hearing : 27.06.2024
Date of Pronouncement : 28.06.2024

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld. CIT(A), National Faceless Appeal Centre, Delhi vide order no. ITBA/NFAC/S/250/2023-24/1055192197(1), dated 17.08.2023 passed against the assessment order by the Income Tax Officer, Ward 2(5), Thane, u/s. 144 of the Income-tax Act, 1961 (hereinafter referred to as the “Act”), dated 27.11.2019 for AY 2012-13.

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

“1) *In the facts and circumstances of the case and in law, the Id. CIT (A) has erred in confirming the addition of Rs.50,00,500/-, being cash deposits in the bank account with DCB Bank, Mira Road Branch, Maharashtra, made by the Ld. AO as unexplained money, u/s 69A of the I.T Act, 1961 without*

appreciating that the impugned transactions were made out of cash in hand as appearing in the bank statement.

2) In the facts and circumstances of the case and in law, the Ld. CIT (A) while confirming the addition of Rs. 5000,050/- has erred in not appreciating that the provisions of section 69A of the IT Act, 1961 is only attracted in case of money found in possession of the appellant, that is neither associated with the business of the appellant nor recorded in books of account of the appellant.

3) In the facts and circumstances of the case and in law, the Ld. CIT (A) has erred in confirming the addition of ad hoc estimated income of Rs.78,65,046/-, at an exorbitant rate of 8 percent of the bank credits, other than cash deposits, without appreciating that the impugned transactions were part of the trading business, where the net profit ranges from 1 to 2% only in the appellant's nature of business.”

3. There is a delay of 138 days in filing the present appeal before the Tribunal for which petition for condonation of delay along with affidavit is placed on record explaining the reasons for the delay caused. We have perused the petition and the affidavit, considering the same, we find it appropriate to condone the delay and take up the matter for adjudication.

4. Case of the assessee was taken up for assessment u/s.147 owing to deposit of cash of Rs.50,00,500/- in the bank account and no return filed by the assessee for the year under consideration.

5. In the course of assessment, Ld. Assessing Officer also noted that there are other high value credits of Rs.9,83,13,087/- in the bank account of the assessee. Assessee was asked to furnish details and explanation in respect to deposit of cash and this high value credits in her bank account. Since assessee did not furnish any details and did not comply with any of the notices issued by the Ld. Assessing Officer, assessment was completed u/s.144 r.w.s. 147 by making additions in this respect. Aggrieved, assessee went in appeal before the Ld. CIT(A).

6. Before him also none attended on any of the hearings fixed by the Ld. CIT(A). No written submissions were also furnished for substantiating the claims made by the assessee in the grounds of appeal taken before the Ld. CIT(A). Accordingly, Ld. CIT(A) dismissed

the appeal of the assessee by upholding the additions made by the Ld. Assessing Officer. Aggrieved, assessee is in appeal before the Tribunal.

7. Before us, Ld. Counsel for the assessee pleaded to provide one opportunity to make all the required submissions and explanations by remitting the matter back to the file of Ld. CIT(A). He gave an assurance to the Bench that if the matter is so remitted, all the efforts shall be made to comply with the notices of the hearing fixed.

8. Per contra, Ld. Sr. DR though objecting on the plea of the Ld. Counsel fairly submitted that since nothing has been furnished at the stage of assessment as well as first appeal, the matter may be remitted back to the file of the Ld. Assessing Officer which would avoid multiplicity of proceedings before the Ld. CIT(A) of calling remand report.

9. Having heard both the parties, we, by taking into consideration the support given by the Ld. Sr. DR to the plea made by the Ld. Counsel, find it appropriate to remit the matter back to the file of the Ld. Assessing Officer for denovo meritorious adjudication. By taking note of the conduct of the assessee at all the stages of the proceedings before the authorities below, we are compelled to direct the assessee to be diligent and cooperative in attending the hearings and make her submissions for expeditious and effective disposal of the appeal. She should not seek adjournments unless warranted by compelling reasons.

11. Since the matter is restored to the file of Ld. Assessing Officer 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 assessment procedure before the Ld. Assessing Officer. The observations herein made by us in remanding the matter back to the file of Ld. Assessing Officer will not

impair or injure the case of the Revenue nor will it cause any prejudice to the defense/explanation of the assessee.

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

Order is pronounced in the open court on 28 June, 2024

Sd/-
(Kavitha Rajagopal)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 28 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