

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

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**

**ITA No.1836/Mum/2024
(Assessment Year :2013-14)**

Suvarna K Koli (Legal Heir of Late M. Krishnakumar Raghunath Koli Flat No.2503, Building No.9, Shirin Tower, G.B.Road, Haware City Kasarvadavali Thane (W)-400615	Vs.	Income Tax Officer, Ward 1(3) Thane
PAN/GIR No.ADIPK5688B		
(Appellant)	..	(Respondent)

Assessee by	Shri Rajesh S Athavale
Revenue by	Shri P.D. Chougule
Date of Hearing	01/07/2024
Date of Pronouncement	03/07/2024

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the assessee against order dated 12/06/2023 passed by NFAC, Delhi for the quantum of assessment passed u/s.144 for the A.Y.2013-14.

2. Prima facie, the appeal is delayed by 216 days. In the petition for condonation of delay it has been stated as under:-

“I, Suvarna k Koli, legal heir of the appellant is making this application before your honour for condonation of delay in filing the appeal against the order passed under Section 250 of the Income tax Act by learned Commissioner of Income tax (Appeal) for the aforesaid assessment year. It appears that the said order has been received by the appellant on 12 June 2023 ie. the date of the order passed by the CIT(A).

I would like to bring to your notice that the delay in filing of appeal happened because the appellant died on 15 August 2022 and thereafter no one in his family were aware about his outstanding income tax matters. In fact, prior to his death also he was busy in the medical treatment for himself for more than 8-9 years and therefore, no one was looking after his income tax assessment matters. A copy of his death certificate is enclosed. When the Income tax recovery notice has been received recently by me, I came to know about all this outstanding appeal matters. Due to these reasons, the order passed by the Commissioner of Income tax (Appeals) under Section 250 has remained unattended.”

3. After hearing both the appeals and looking to the fact that assessee died on 15/08/2022 and no one in his family was aware of any outstanding income tax matters and even prior to the death, he was seriously ill for more than 8-9 years. Therefore, in these circumstances, we find that there was a reasonable cause in filing the appeal belatedly. Accordingly, the delay is condoned.

4. In the grounds of appeal, assessee has raised following grounds:-

1. *“The learned CIT(A) erred in passing ex-parte order, without going into the merits of the case.*

2 *The learned CIT(A) erred in confirming the action of the Assessing Officer (AO) in making addition of INR 35,00,000 and*

INR 2,70,930 being unsecured loan and sundry creditors, respectively aggregating to INR 37,70,930 under Section 69C of the Income tax Act.

3. The learned CIT(A) erred in confirming the ad-hoc disallowance of INR 8,14,829 (20% of total business expenses) made by the AO out of total business expenses of INR 40,74,149 on the ground that the same cannot be said to have been laid out or expended wholly and exclusively for the purposes of business.

4. The learned CIT(A) erred in confirming the ad-hoc disallowance of commission INR 2,56,145 (20% of total discount allowed) made by the AO out of total discount allowed of INR 12,80,728, without giving any reasons for such disallowance.

5. The learned CIT(A) erred in not directing the AO to drop the penalty proceedings initiated under Sections 271(1)(c) and 271(1)(b) of the Income tax Act.”

5. The brief facts are that the late assessee had filed his e-return of income on 30/09/2013 declaring income of Rs.7,84,217/-. The said return was duly processed u/s.143(1). Later on, the **case was selected for limited scrutiny under the CASS for two reasons firstly, large commission expenses and secondly, low net profit which has been mentioned in para 10 of the assessment order.** The assessee had LPG agency of Bharat Petroleum and was a distributor of gas to various sub-distributors and then to customers for household use. The income was only on account of commission received from Bharat Petroleum. The assessment has been passed by the ld. AO ex parte u/s.144 on the ground that there is no compliance of notices sent by the ld. AO. Thereafter, ld. AO from the perusal of the balance sheet noted that there was unsecured loan for

Rs.35,00,000/- and sundry creditors of Rs. 2,70,930/- and accordingly, he added the entire amount of Rs.37,70,930/-, thereafter, he noted that assessee had debited total expenses of Rs.40,74,149/- and on adhoc basis it disallowed 20% which works out to Rs.8,40,829/-. Further, he noted that assessee had paid commission to sub-distributors and accordingly, out of total commission paid of Rs. 12,80,728/-. Ld. AO made adhoc disallowance of 20% which works out to Rs.2,56,145/-. Accordingly, assessment was completed at Rs.50,26,120/- after making correct addition of Rs.48,41,904/-.

6. First of all, once the case has been selected of limited scrutiny for two reasons, and then ld. AO could not have expanded the scope of CASS by making the addition on other items of balance sheet and profit and loss account especially in the case of best judgment assessment. Nothing is on record that ld. AO sought permission to convert the case into full scrutiny from the higher authorities. CBDT Instruction No. F.No. 225/26/2006-ITA.II (P) dated 08.09.2010 and Instruction No. 7/2014 dated 26.09.2014 have clearly directed that the scrutiny of cases selected by CASS shall be limited only to the types of information received through AIR and scope of enquiry should be limited to verification of items selected for scrutiny and nothing else. The ld. AO shall confine the questionnaires and subsequent enquiry of verification only on the specific points on the basis of which particular return has been selected for scrutiny.

7. Ergo, the addition for Rs.35,00,000/- on account of unsecured loan and sundry creditors of Rs.2,70,930/- simply by picking the figures from balance sheet is beyond the scope of limited CASS scrutiny. Limited scrutiny was only for: i) large commission expenses and; ii) low net profit. Accordingly, the entire amount of Rs.37,70,930/- is deleted.

8. In so far as adhoc disallowance of various expenses, we find that most of these expenses like salary, wages, repairs and maintenance, rent rates and taxes, bank interest, telephone & mobile charges, electricity charges and professional fees have been paid through cheques. Even the depreciation and sales tax also, no disallowance should have been made on estimate adhoc. The details of expense s debited are as under:-

Sr. No.	Particulars	Amount
1	Salary and wages	Rs. 18,35,620/-
2	Repairs & Maintenance	Rs. 1,55,320/-
3	Rent, Rates & Taxes..	Rs. 3,63,000/-
4	Telephone & Mobile Charges	Rs. 63,201/-
5	Electricity Charges	Rs. 36,012/-
6	Bank Interest & Charges	Rs. 1,52,460/-
7	Office expenses	Rs. 1,85,056/-
8	Staff Welfare	Rs. 25,632/-
9	Vehicle expenses...	Rs. 39,632/-

10	Travelling & Conveyence..	Rs. 1,54,805/-
11	Printing & Stationery.	Rs. 15,628/-
12	Professional fees	Rs 18,000/-
13	Depreciation	Rs 1,21,697/-
14	Sales Tax (VAT)	Rs 1,13,869/-
	Total	Rs.40,74,149/-

9. Even if certain expenses were unverifiable, then same should be restricted to only those expenses which can be said to be unverifiable or payment made through cash. Accordingly, adhoc disallowance is reduced to 10% on the following items:-

Sr. No.	Particulars	Amount
1	Salary and wages	Rs. 18,35,620/-
2	Repairs & Maintenance	Rs. 1,55,320/-
3	Office expenses	Rs. 1,85,056/-
4	Staff Welfare	Rs. 25,632/-
5	Vehicle expenses...	Rs. 39,632/-
6	Travelling & Conveyence..	Rs. 1,54,805/-
7	Printing & Stationery.	Rs. 15,628/-

And for other items, no disallowance is called for.

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10. In so far as commission expenses are concerned, if these commissions have been paid to sub-distributors because assessee gets commission from Bharat Petroleum and then assessee passes part of the commissions to Sub-distributors, then, there cannot be any adhoc disallowance of commission payment. Accordingly, adhoc addition of commission is deleted.

9. In the result, appeal of the assessee is partly allowed.

Order pronounced on 3rd July, 2024.

Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER

Mumbai; Dated 03/07/2024
KARUNA, sr.ps

Sd/-
(AMIT SHUKLA)
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)

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Suvarna K Koli
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ITAT, Mumbai