

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH MUMBAI
BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

ITA No.1851/MUM/2024
Assessment Year: 2017-18

Rishabh Chhaganlal Shah, 41/42, 3 rd floor, Firoza Mansion, Sir Ratan Tata Colony, Tardeo, Mumbai – 400007 (PAN : CGTPS0865G)	Vs.	Income Tax Officer, Ward- 19(3)(1), Mumbai
(Appellant)		(Respondent)

Present for:

Assessee : None
Revenue : Smt. Sanyogita Nagpal, CIT DR

Date of Hearing : 09.07.2024
Date of Pronouncement : 18.07.2024

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/250/2023-24/1061046665(1), dated 16.02.2024 passed against the assessment order by Income Tax Officer, Ward 19(3)(1), Mumbai, u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”), dated 30.12.2019 for Assessment Year 2017-18.

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

1. *“On the facts and in the circumstances of the case and law on the subject, the appellant prays that the Ld.CIT(A) erred in not providing opportunity sufficient of hearing before upholding the action of learned Assessing officer. In view of the above the order be held as illegal having been passed in contravention of principles of natural justice.*
2. *On the facts and in the circumstances of the case and law on the subject, the learned Income Tax officer erred in making addition of Rs.18,44,75,000/- by treating cash deposit which has been made out of cash sales as unexplained cash credit u/s 68 r.w.s 115BBE of the Income Tax Act, 1961 & the learned CIT (Appeals) erred in confirming the additions Rs.18,44,75,000/- of and upholding the actions of the ld. AO without correct appreciation of the facts and law on the subject. In view of the facts and circumstances of the case and law on the subject, the same may be deleted.*
3. *On the facts and in the circumstances of the case and law on the subject, the learned assessing officer erred in making estimated additions Rs.4,53,83,697/- of as commission income being 4% of total sales made during the year & the learned CIT (Appeal) erred in upholding same without correct appreciation of facts and law on the subject.*

In view of the facts and circumstances of the case and law on the subject, the same may be deleted.

4. *On the facts and in the circumstances of the case and law on the subject, the learned assessing officer erred in disallowing at Rs.49,00,000/- on account of introduction of proprietor's capital treating it as unexplained cash & the learned CIT (Appeal) erred in confirming addition of Rs. 49,00,000/- on account of introduction of proprietor's capital, without correct appreciation of facts and law on the subject.*

In view of the facts and circumstances of the case and law on the subject, the same may be deleted.”

3. In ground no.1, assessee has prayed that sufficient opportunity of hearing has not been given to the assessee and the order has been passed in contravention of principles of natural justice. In reference to this ground of appeal taken by the assessee, order of ld. CIT(A) was perused. From the said perusal, it is noted that ld. CIT(A) proceeded to

adjudicate upon the matter since assessee did not make any submission to represent his case. He passed the order on the basis of the material available on record by taking note of the observations made by the ld. Assessing Officer in the impugned assessment order, to uphold the additions made therein. The addition made by the ld. Assessing Officer relates to deposit of cash in the bank account of Rs.18,44,75,000/- treated as unexplained cash credit u/s.68 r.w.s. 115BBE. Second addition relates to estimated addition of Rs.4,53,83,697/- as commission income, being 4% of total sales made during the year and third being disallowance of Rs.49,00,000/- towards introduction of proprietor's capital treating it as unexplained cash credit. From para 4.1 of the order of ld. CIT(A), we note that two notices were issued on 29.11.2023 and 10.01.2024. After these notices which remained uncompiled, the impugned first appellate order was passed dismissing the appeal of the assessee.

4. Considering the facts on record, whereby assessee had made his submissions at the assessment stage which could not be furnished at the first appellate stage, in the interest of justice and fair play, we find it appropriate to remit the appeal back to the files of ld. CIT(A) for *denovo* meritorious adjudication of the grounds of appeal taken by the assessee at the first appellate stage. Assessee is at liberty to furnish details and documents, if he so requires, to substantiate his claim.

5. While remitting the matter back to the file of ld. CIT(A), we note that there are lapses on the part of assessee of not attending any of the hearings, for which ample opportunities were given. We thus, direct the assessee to be diligent in attending the hearings before the Ld. CIT(A)

for expeditious disposal of the matter and not to seek adjournments unless warranted by compelling reasons.

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

Order is pronounced in the open court on 18 July, 2024

Sd/-
(Satbeer Singh Godara)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 18 July, 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