

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

**ITA No.1855/MUM/2024**  
**Assessment Year: 2017-18**

Dilip Amichand Mehta, 16/17/18, Sonal Apartment, LBS Road, Ghatkoper West, Mumbai – 400086  (PAN : AACPM7587Q)	Vs.	Assistant Commissioner of Income Tax- Circle 27(1), Mumbai
<b>(Appellant)</b>		<b>(Respondent)</b>

**Present for:**

Assessee : None  
Revenue : Smt. Mahita Nair, Sr. 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. Addl/JCIT(A)-4, Delhi, vide order no. ITBA/APL/S/250/2023-24/1062536767(1), dated 13.03.2024 passed against the assessment order by Assistant Commissioner of Income Tax, Circle 27(1), Mumbai, u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”), dated 22.11.2019 for Assessment Year 2017-18.

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

*“1. Being aggrieved from the assessment order passed by the learned assessing order passed on 22.11.2019 raising demand of Rs. 174547 your appellant had filed appeal before CIT (A) on 20.12.2019.*

2. Your appellant had received notice of hearing u/s 250 of the Act, from CIT (A) calling your appellant to submit the details. your appellant had filed request for adjournment on 03.01.2024, 02.03.2024 and also on 04.03.2024 (Copy of Screenshot / Acknowledgement / Submitted herewith)

3. Hon. CIT (A) passed order on 04.03.2024 dismissing appeal on 04.03.2024, dismissing appeal by stating that appellant is not interested in pursuing this appeal. However, your appellant has already submitted request of adjournment on 03.01.2024, 02.03.2024 also on 04.03.2024 and is interested in pursuing appeal.

4. In view of the facts of case, narrated above and in any case, your appellant prays that an opportunity shall be given to your appellant to submit the argument in support of appeal filed.

5. Your appellant prays that the order passed by CIT (A), shall be set aside and grant an opportunity to your appellant.”

3. The grievances of the assessee by way of this appeal are essentially two folds, first being no reasonable opportunity of being heard given to the assessee to represent his case and second is in respect of disallowance of expenses which according to the assessee were incurred to earn commission income from the partnership firm which have been proportionately disallowed by the ld. Assessing Officer.

4. Briefly facts stated are that assessee filed his return of income on 31.03.2018 reporting total income at Rs.51,88,680/-. Income earned by the assessee included the following:

<b>Particulars</b>	<b>Amount in Rs.</b>
Salaries	750000
Profit and gains from business & profession (Taxable)	1608152
Profit and gains from business & profession (Exempt)	6831111
Income from Other Source (Less Rs. 12,000/-)	4487442
<b>Total Income earned</b>	<b>13676705</b>

4.1. Against the income from other sources of Rs.44,99,442/-, assessee had claimed incidental expenses of Rs.13,63,916/-. Details were called for, along with explanations in respect of these incidental expenses claimed by the assessee as deduction as well as to furnish supporting proof. From the details provided by the assessee, these expenses included professional fees, commission paid, business promotion expenses, car insurance, depreciation, interest on car loan, lodging and boarding expenses, newspaper, petrol expenses, printing and stationery, salary, telephone expenses and travelling expenses. According to the assessee, these expenses are wholly attributable to earning of commission income from the partnership firm in which assessee is the partner. According to him, these are not incurred to earn remuneration, interest and share of profit from the partnership firm but are wholly and exclusively incurred for administration and managing day to day affairs to earn the commission income.

4.2. In this respect, ld. Assessing Officer observed that assessee had furnished the details of incidental expenses but failed to furnish supporting proof to establish that expenses are incurred for earning income from commission. According to him, possibility of expenses incurred for discharging of business responsibilities of being a director and partner in business concerns forming part of the claim of the incidental expenses cannot be ruled out. Thus, ld. Assessing Officer restricted the claim of the assessee to Rs.6,82,680/- and disallowed the balance of Rs.6,81,236/-.

5. Aggrieved, assessee went in appeal before the ld. CIT(A) who has dismissed the appeal for non-prosecution, since assessee failed to file

any submission and represent his case on various dates, fixed for hearing. Aggrieved, assessee is in appeal before the Tribunal.

6. We note that as per Section 250(6) of the Act –

*“The order of the Appellate Assistant Commissioner disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reason for the decision.”*

6.1. Ld. CIT(A) did not comply with the aforesaid provisions in the Act. However, case of the assessee relates to estimation of expenses claimed towards earning of commission income from the partnership firm in which assessee is the partner. Admittedly, it is a fact on record that assessee has earned and reported the income earned by him as remuneration, interest and share on profit from the partnership firm. Assessee has also earned commission income from the partnership firm against which incidental expenses has been claimed as deduction. Assessee did furnish details of incidental expenses but has failed to establish that expenses have been incurred for earning the commission income. In absence of such documentary evidences to substantiate the claim, ld. Assessing Officer has estimated the allowance to Rs.6,82,680/- out of total of Rs.13,63,916/-.

7. Before us, none represented the assessee. Considering the facts on record and the detailed observations made by the ld. Assessing Officer in his order, in the interest of justice and fair play, we find it appropriate to restrict the disallowance to Rs.3,40,618/-. Accordingly, assessee gets a relief of Rs.10,23,298/- for the claim of expenses.

8. In the result, grounds taken by the assessee are partially allowed.
9. In the result, appeal of the assessee is partially allowed.

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