

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A", MUMBAI

**BEFORE SHRI PRASHANT MAHARSHI, ACCOUNTANT MEMBER AND
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER
I.T.A No.512/Mum/2024
(Assessment Year : 2014-15)**

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| M Arvindkumar Jewellers Private Limited, 15-A, 1st Floor, L.K. Market, Shaikh Memon Street, Zaveri Bazaar, Mumbai-400 002 PAN : AAGCM6102J | vs | Income-tax Officer-4(2)(4), Mumbai Aayakar Bhavan, M.K. Road, Marine Line, Mumbai-400 020 |
| APPELLANT | | RESPONDENT |

Assessee by : Shri Narayan Atal
Respondent by : Shri Manoj Kumar Sinha (CIT DR)

Date of hearing : 11/07/2024
Date of pronouncement : 24/ 07/2024

ORDER

PER ANIKESH BANERJEE, J.M:

The instant appeal of the assessee was filed against the order of the National Faceless Appeal Centre, Delhi (NFAC)[for brevity, 'Ld.CIT(A)'] passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), for Assessment Year 2014-15, date of order 22.12.2023. The impugned order was emanated from the order of the Income-tax Officer 4(2)(4),Mumbai (in short, 'the A.O.')

passed under section 145 read with section 144 of the Act date of order 08/12/2016.

2. The assessee has taken the following grounds of appeal:-

“1. The Learned Commissioner of Income Tax (Appeals), NFAC, Income Tax Department [hereinafter referred to as the CIT(A)] erred in confirming the total income of Rs.2,00,29,543/- assessed by the Income Tax Officer - 4(2)(4), Mumbai (ITO) by estimating the same @ 1% of the Turnover and accordingly passing the assessment order u/s. 145 r. w. s. 144 of the Income Tax Act, 1961.

Your appellant submits that on the facts and circumstances of the case and in law, the estimation of income is on adhoc basis and accordingly the CIT(A)'s order and the assessment order ought to be set aside.

2. The Learned CIT(A) erred in not accepting the submissions made, in particular about the net profit ratio in respect of the last two assessment years 2012-13 and 2013-14, wherein the ITO has accepted the same as per the respective assessment orders passed u/s. 143(3) of the Income Tax Act.

Your appellant submits that the net profit ratio for the year should be applied and accordingly the total income as per the Computation should be accepted.

Your appellant craves leave to add to, alter or amend any of the afore stated grounds of appeal.”

2. The brief facts of the case is that In this case, returns of income for A.Y. 2014-15 was filed by the assessee company on 30.11.2014 declaring total income at Rs.18,47,2307-. Case was selected for scrutiny and assessment order u/s.144 of the Act was completed on 08.12.2016, because the assessee has neither attended nor filed any submission/evidences before the AO till the completion of assessment proceedings, determining the total income at Rs.2,00,29,540/- by estimating the net profit @1% after rejecting the books of accounts u/s.145(3) of the IT. Act. The assessee was specifically asked to furnish the details and explanation on the show-cause by 28.10.2016, but by this time also the assessee failed to furnish any details or explanation. Therefore, the AO has left no option but completed the assessment in an ex-parte manner u/s.144 of the Act after rejecting the books of account of the assessee by making addition of Rs.2,00,29,543/- on net profit being 1% of total turnover. While completing the

assessment; the AO initiated penalty proceedings u/s.271(1)(c) of the Act on this issue. On appeal, the Ld.CIT(A) upheld the addition and dismissed the appeal filed by the assessee. Aggrieved assessee has filed the present appeal before us.

3. The Ld.AR argued and placed that both the assessment order and appeal order are exparte. Due to family problem, the assessee was unable to appear before the authorities. The Ld.AR further placed that the assessee has a turnover in impugned assessment year amount to Rs.200,29,54,315/- and 1% of the net profit was estimated which is amount to Rs.2,44,29,543/- whereas the assessee declared in the return of income the net profit amount to Rs.18,47,230/-. The excess addition of estimated profit of the assessee was added back with the total income on the ground that assessee was unable to submit the books of account before the Ld.AO during the assessment proceedings. Being aggrieved on the assessment order, the assessee filed an appeal before the CIT(A). The Ld.CIT(A) passed an order exparte and the assessee was also unable to submit any books of account before the authorities below. Accordingly, the assessment order is upheld. Being aggrieved, assessee filed an appeal before us.

4. The Ld.DR argued vehemently and further placed that the assessee was totally non co-operative in the assessment proceedings and appeal proceedings. Several opportunities were given to assessee to submit the books of account, but the assessee failed to do so. The Ld.DR invited our attention in assessment order page 6 which is reproduced as below:-

“13. Further, the Assessee Company has also never made any genuine effort to explain its case as evident from the details of the events stated above.

14. Since, the Assessee Company was given sufficient time and opportunities; however, the Assessee Company has not cared to comply the notices issued, show cause and summon u/s 131 of the IT. Act and not availed of the opportunities granted to it. Upon exhausted all the provision, I have, therefore, no other alternative but to pass the order ex-party order u/s 144 of the Income Tax Act, 1961 on the basis of material available on record. Hence, the assessment is finalized u/s 144 of the Income Tax Act, 1961.

15. .As the books of account were not produced before undersigned for coming to the satisfaction about the correctness. Since the Assessee Company is not willing to produce the books of account or failed to produce the books for a VALID reasons to act that books of accounts are incorrect or incomplete. The true profit could not be ascertainable for year under consideration.

16. On perusal of P&L A/c the total turnover as on 31.03.2014 is reflected at Rs.200,29,54,315/-. Apparently, it was/is not the case of u/s 44AD as the turnover exceeds the limit prescribed in u/s 44AD. I have no other option but to estimate the net profit @1% of total turnover which is workout at Rs.2,00,29,543/- in terms of section 145(3) of the IT. Act, 1961.”

The Ld.DR further relied on the appeal order and relevant part of the appeal order is reproduced as below:-

“5.3 On account of glaring flaw in form of lower gross profit without any proper justification, non-maintenance of day-to-day stock register and non-production of books of accounts, the books of accounts are hit by the mischief of section 145 of the Income-tax Act, 1961. The act of the appellant in respect of non-production of books of account squarely fail with regards to the twin tests of completeness and correctness. Thus, results of the books of accounts rejected by the Ld. AO u/s. 145(3) of the Income-tax Act, 1961 is found acceptable. ;”

5.4 Applying the ratio pronounced in the above cited judgements, it is apparent that in the instant case the appellant has neither produced books of accounts along with necessary bills/vouchers, etc. before the AO during the course of assessment proceedings nor produced the same before this office at the appellate stage. Therefore, it is clear that the appellant has failed to prove a full & true disclosure of all the material facts and hence no interference is required in the order passed by the Ld. AO. Hence, this ground of appeal is dismissed.”

5. We heard the rival submission and considered the documents available in the record. The assessee has a turnover of more than Rs.200 crores but the profit is declared at Rs.18,47,230/- in impugned assessment year. But in very feeble profit, the assessee was also non co-operative before the revenue authorities. We find that assessee was negligent and not able to produce the books of account before any of the authorities below. The time of the authorities was lapsed and accordingly, we are imposing cost of Rs.10,000/- on the assessee and the Ld.AR is also accepted the cost before the Bench. The cost amount of Rs.10,000/- should be paid in Prime Minister's Relief Fund within 90 days on receipt of this order. We remit back the matter to the file of the Ld.AO for further verification de novo in the assessee's case. It is also directed the Ld.AO to verify the payment receipt of the cost on the assessee before proceeding with the assessment proceedings. We are not expressing any view on the merit of the case which will impair the assessment proceedings. Needless to say, the assessee should get a reasonable opportunity of hearing in set aside proceedings. On the other hand, the assessee should be diligent enough and be co-operative in assessment proceedings for quick disposal of assessment.

6. In the result, the appeal of the assessee bearing **ITA 512/Mum/2024** is allowed for statistical purpose.

Order pronounced in the open court on 24th day of July, 2024.

Sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated: 24/07/2024

Pavanan

sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
5. गार्ड फाइल/Guard file.

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BY ORDER,

(Asstt. Registrar), **ITAT, Mumbai**