

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH
MUMBAI
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER
ITA No. 854/MUM/2024
(A.Y.2012-13)

Shri Anilkumar Shrichandra Jha 201, Harshal Apartment,, YK Nagar Nx, Virar(West), Thane – 401303. Mumbai	Vs.	ITO-Ward-42(1)(1), Kautilya Bhavan, Mumbai -400050.
PAN/GIR No. AFAPJ5344R		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

Appellant by	Ms. Ranjana Soni.AR
Respondent by	Shri Manoj Kumar Sinha, Sr. DR

सुनवाई की तारीख/Date of Hearing	30.07.2024
घोषणा की तारीख/Date of Pronouncement	31.07.2024

ORDER

PER PAVAN KUMAR GADALE, JM:

The appeal is filed by the assessee against the order of National Faceless Appeal Centre, Delhi / CIT(A), Mumbai passed u/sec 143(3) r.w.s 147 and u/sec 250 of the Act. The assessee has raised the following grounds of appeal:

The Assessee prefers an appeal against an order dated 27/12/2023 passed by the National Faceless Appeal Centre (NFAC), Delhi on following amongst other grounds, each of which is without prejudice to any others:

- 1. On the facts and circumstances of the case and in law, the Learned CIT (Appeal) failed to consider the fact that the Assessing Officer has not provided the copy of reasons recorded to the appellant.*

2. *On the facts and circumstances of the case and in law, the Learned CIT(Appeal) has not provided proper opportunity of being heard to the appellant.*

3. *On the facts and circumstances of the case and in law, the Learned CIT (Appeal) has failed to appreciate the fact that the appellant has filed the return of income u/s. 139 of the act as well as in response to notice u/s. 148 of the Income Tax Act and books of accounts were maintained.*

4. *On the Facts and circumstances of the case and in law, the Learned CIT (Appeal) has failed to appreciate the facts that the appellant has submitted the details from time to time as asked by Ld. Assessing Officer.*

5. *On the facts and circumstances of the case and in law, the Learned CIT(Appeal) erred in confirming the rejection of books of accounts of the appellant u/s. 145 of the Income Tax Act, 1961 without appreciating the facts and submissions made by the appellant during the re-assessment proceedings*

6. *On the facts and circumstances of the case and in law, the Learned CIT (Appeal) erred in confirming the addition of Rs. 4,20,66,945/- being 15% of the total gross receipt disclosed in return of income by rejecting books of accounts u/s. 145 of the Act, without considering facts of the case.*

6.1 *On the facts and circumstances of the case and in law, the learned Assessing Officer erred in considering the returned income of Rs. 6,91,316/- while calculating total income even though has reject the books of accounts of the appellant.*

7. Without prejudice, On the facts and circumstances of the case and in law, reasonable profit embedded in business to be added by the Learned Assessing Officer instead of at the rate of 15%.

8. The appellant craves leave to add, alter, amend or modify any or all grounds till the disposal of the Appeal.

2. The brief facts of the case are that, the assessee is engaged in the business of trading in garment, trading in Gems & Jewellery & trading in stainless steel. The assessee has filed the return of income for the A.Y 2012-13 on 30.09.2012 disclosing a total income of Rs.5,91,320/-. The Assessing Officer (AO) has received information from DDIT (Inv) wing in respect of the turnover of the assessee and the transactions entered with various parties as referred in page 2 of the assessment order. Therefore the AO has reason to believe that the income has escaped assesment and has issued notice u/sec148 of the Act and further the AO has issued notice u/sec 142(1) of the Act on various dates. In compliance to the notices, the Ld. AR of the assessee has filed the details and the AO has called for ledger accounts of the parties, confirmations and bank statements. Since the assessee could not file the complete information, the AO has rejected the books of accounts u/s 145(3) of the Act and has estimated the income @ 15% on the total turnover which worked out to Rs.4,20,66,942/- and finally assessed the total income of

Rs. 4,26,58,258/- and passed the order u/s 143(3) r.w.s 147 of the Act dated 27.12.2019.

3. Aggrieved by the order, the assessee has filed an appeal before the CIT(A), whereas the CIT(A) has considered the grounds of appeal, statement of facts and findings of the AO and has issued notices of hearing and since there was no compliance by the assessee to notices.. Therefore the CIT(A) considering the information on record has confirmed the action of the A.O and dismissed the appeal. Aggrieved by the order of the CIT(A), the assessee has filed an appeal before the Hon'ble Tribunal. At the time of hearing none appeared on behalf of the assessee and the Ld. DR supported the order of the CIT(A).

4. At the time of hearing, the Ld. AR submitted that the CIT(A) has erred in not considering the submissions of the assessee in the assessment proceedings. The Ld.AR emphasized that the assessee has good case on merits with supporting evidences which goes to roots of the case and play a vital role in the decision making and prayed for an opportunity to substantiate before the lower authorities. Per Contra, the Ld. DR relied on the order of the CIT(A).

5. We heard the rival submissions and perused the material on record. Prima-facie the CIT(A) has passed the order considering the fact that there is no compliance nor

appearance in spite of providing adequate opportunity of hearing and the notices were issued. Therefore, the CIT(A) was of the opinion that the assessee is not interested in prosecuting the appeal and dismissed the appeal ex-parte confirming the action of the assessing officer. The Ld. CIT(A) has issued the notices of hearing on 8.08.2023, 4.10.2023, 23.10.2023, 5.12.2023 and 14.12.2023 referred at Page 8 Para 5.2 of the order but there was no response and thus the Ld.CIT(A) came to a conclusion that the assessee is not interested and decided the appeal based on the information available on record. Whereas the assessee has raised grounds of appeal challenging the additions made by the A.O and there could be various reasons for non appearance which cannot be overruled. Therefore, considering the facts and principles of natural justice, we shall provide with one more opportunity of hearing to the assessee to substantiate the case with evidences and information subject to payment of cost of Rs.2000/- to the Income Tax Department within one month from the date of receipt of the order and produce the proof of payment. Accordingly, set aside the order of the CIT(A) and remit the entire disputed issues to the file of the CIT(A) to adjudicate afresh and the assessee should be provided adequate opportunity of hearing and shall cooperate in submitting the information for early disposal of the Appeal. Accordingly, we allow the grounds of appeal of the assessee for statistical purposes.

5. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 31.07.2024

Sd/-
(GIRISH AGRAWAL)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated: 31/07/2024

KRK

Copy of the Order forwarded to:

1. The Appellant,
2. The Respondent
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,
(Dy./Asstt. Registrar)ITAT,
Mumbai