

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI SANDEEP SINGH KARHAIL (JUDICIAL MEMBER)**

**ITA No. 1755, 1754, 1753, 1545, 1544/MUM/2024
Assessment Year: 2008-09, 2010-11, 2011-12**

Vijay Kanaiyalal Shah HUF
Plot No. 30, Shri Krupa Row
House, Sector 2A, Koperkhairne,
Navi Mumbai-400709.

PAN NO. AAEHV 8363 F

Appellant

Vs.

Income Tax Officer-28(3)(1),
IT Office, Vashi Railway Station
Building,
Navi Mumbai-400703.

Respondent

Assessee by : Mr. Tanzil Padvekar/Gopal Sharma
Revenue by : Mr. Ashish Kumar, Sr. DR

Date of Hearing : 26/06/2024
Date of pronouncement : 24/07/2024

ORDER

PER OM PRAKASH KANT, AM

These appeals by the assessee are directed against separate orders, all dated 12.02.2024, passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short 'the Ld. CIT(A)'] for assessment years 2008-09, 2010-11 and 2011-12 respectively.



2. The captioned first three appeals are against quantum assessment proceedings for assessment year 2008-09, 2010-11 and 2011-12 respectively, whereas remaining two appeals are in respect of penalty proceedings u/s 271(1)(c) of the Income-tax Act, 1961 (in short 'the Act') for assessment year 2010-11 and 2011-12 respectively. The common issue in dispute are involved in these appeals, therefore, same were heard together and disposed off by way of this consolidated order for convenience.

3. At the outset, the Ld. counsel for the assessee referred to the application for filing additional evidence along with copy of the additional evidences in respect of quantum assessment proceedings for assessment years 2008-09, 2010-11 and 2011-12 respectively. He submitted that documentary evidences in support of claim of the assessee were filed before the Ld. CIT(A), but the Ld. CIT(A) noted that no submission were filed by the assessee and passed the order against the assessee without considering submission of the assessee. In view of the above, the Ld. counsel for the assessee prayed that submission of the assessee should be considered and additional evidences filed by the assessee might be admitted and matter in issue in dispute in the quantum assessment proceedings and penalty proceedings might be restored back to the file of the Ld. CIT(A) or the Assessing Officer.



4. We have heard rival submission of the parties and perused the relevant material on record. On perusal of the assessment order for the assessment year 2008-09, we find that the Assessing Officer completed the assessment u/s 144 of the Act in view of the non-compliance on the part of the assessee to explain the deposit of Rs.14,70,000/- in the bank account.

4.1 On further appeal, the Ld. CIT(A) dismissed the appeal observing as under:

“6.2.1 During the assessment proceedings the assessee offered no explanation about the nature and source of cash deposits in saving bank account. The AO thus held that the assessee is the owner of money deposits of Rs. 14,70,000/- in saving bank account was treated as "unexplained money" and deemed to be the income of the assessee for the A.Y. 2011-12.

6.2.2 During the course of appellate proceedings, sufficient opportunities were given to the assessee, however, no written submissions have been filed by the assessee to substantiate the grounds of appeal. The assessee was given specific opportunity to file any written submissions filed by it before any authority physically/online earlier as no replies of the assessee are found existing in the online system. Thus, in the absence of any written submission, I have no material to interfere with observations and addition made by the AO. In view of the above, I upheld the decision of the AO and confirm the addition as discussed above in para 6.2.1. Accordingly, ground of appeal 3 is hereby dismissed.”

4.2 Whereas, before us, the Ld. counsel for the assessee referred to Paper Book pages 62 and 63 and submitted that the Paper Book page 62 is the notice issued by the Ld. CIT(A) under faceless appeal procedure fixing the date for submission on 22.01.2024, which was duly complied as evident from acknowledgment dated 22/01/2024 placed on Paper Book page 63. On perusal of the above, it is



evident that assessee has duly complied with the notice issued by the Ld. CIT(A), but, the Ld. CIT(A) has inadvertently noted in impugned order that no written submission were filed by the assessee and he passed order without considering those submissions of the assessee and upheld the finding of the Ld. Assessing Officer. In view of the above, we feel it appropriate to set aside the order of ld CIT(A) and matter is restored back to the file of the Assessing Officer as the assessee could not file the submission even before the AO. The assessee is at liberty to file additional evidence before the Assessing Officer, which would be considered in accordance with law. The appeal of the assessee for assessment year 2008-09 is accordingly allowed for statistical proposes.

4.3 The assessee has filed application for admitting additional evidence for assessment years 2010-11 and 2011-12 also. The Ld. CIT(A) has dismissed the quantum assessment appeals for AY 2010-11 and 2011-12 citing identical reason of non compliance as in assessment year 2008-09 ,therefore following our finding in above appeal for assessment year 2008-09, the appeals for AY 2010-11 and 2011-12 are also restored back to the file of the Assessing Officer for considering the additional evidence and submission of the assessee and decide in accordance with law. The appeals in quantum proceedings for assessment years 2010-11 and 2011-12 are also allowed for statistical purposes.



5. The appeals in ITA No. 1545/M/2024 and 1544/M/2024 are in respect of penalty levied, which are arising from the quantum proceedings for assessment years 2010-11 and 2011-12, the appeals against which we have already restored to the file of the Assessing Officer and therefore, these proceedings are also set aside and restored to the file of the Assessing Officer to be initiated and levy in accordance with law. Both these appeals are also allowed for statistical purposes.

6. In the result, all the five appeals are allowed for statistical purposes.

Order pronounced in the open Court on 24/07/2024.

**Sd/-
(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER**

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;
Dated: 24/07/2024
Rahul Sharma, Sr. P.S.

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,
(Assistant Registrar)
ITAT, Mumbai