

IN THE INCOME TAX APPELLATE TRIBUNAL "F" BENCH MUMBAI

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

ITA Nos. 3032 to 3036/MUM/2024

**Assessment Years: 2009-10, 2010-11, 2012-13, 2011-12
& 2013-14**

Falguni Shane Peacock, 603, Palm Grove Co-op Hsg. Society, 45-A, East Avenue road, Santacruz West, Mumbai – 400 054 (PAN : AMJPP6296Q)	Vs.	Assistant Commissioner of Income Tax – 22(1), Mumbai
(Appellant)		(Respondent)

Present for:

Assessee : Shri Anuj Kisnadwala, Advocate
Revenue : Smt. Rajeshwari Menon, Sr. DR

Date of Hearing : 26.07.2024
Date of Pronouncement : 26.07.2024

ORDER

PER BENCH:

These five appeals filed by the assessee are against the orders of National Faceless Appeal Centre (NFAC), Delhi, vide order nos.

- i) ITBA/NFAC/S/250/2024-25/1064176879(1),
- ii) ITBA/NFAC/S/250/2024-25/1064176995(1),
- iii) ITBA/NFAC/S/250/2024-25/1064177180(1),
- iv) ITBA/NFAC/S/250/2024-25/1064177328(1) and
- v) ITBA/NFAC/S/250/2024-25/1064177477(1)

all dated 18.04.2024, passed against the assessment orders by Assistant Commissioner of Income Tax, Circle 22(1), Mumbai, u/s.

144 of the Income-tax Act, 1961 (hereinafter referred to as the “Act”), dated 31.03.2016 for AY 2009-10, 2010-11, 2012-13, 2011-12 & 2013-14.

2. Grounds taken by the assessee for each of the Assessment Years are reproduced as under:

ITA No.3032/Mum/2024

1. *The learned CIT (A) has erred in law and on facts in upholding the order passed by the Assessing Officer u/s. 144 r.w.s. 147 of the Income-tax Act, 1961, which is illegal and bad in law and in violation of the principles of natural justice.*

2. *The learned CIT (A) ought to have held that the reopening of the assessment by issuing of notice u/s. 148 of the Act was illegal and bad in law.*

3. *The learned CIT (A) has erred in law and on facts in passing the appellate order, which is invalid and bad in law and against the principles of natural justice.*

4. *The learned CIT(A) has erred in law and on facts in holding that the genuineness of the books of accounts cannot be relied since no return was filed u/s. 139(1) of the Act.*

5. *The learned CIT (A) has erred in law and on facts in upholding the disallowance of Rs. 81,40,430/- u/s. 40(a)(ia) of the Act.*

6. *The learned CIT (A) has erred in law and on facts in upholding the addition of Rs. 21,17,000/- on account of unsecured loans under the head 'Income from other sources'.*

7. *The learned CIT (A) has erred in law and on facts in upholding the addition of Rs. 5,32,142/- (being 30% of Rs. 17,73,807) by treating the same as ceased liability u/s. 41(1) of the Act.*

8. *The learned CIT (A) has erred in law and on facts in upholding adhoc disallowance of Rs. 33,89,580/- (being 30% of 1,12,98,600/-) u/s. 37 of the Act.*

9. *The learned CIT(A) has erred in law and on facts in upholding the disallowance of loss of Rs. 1,50,000/- claimed under the head 'Income from house property'.*

10. *The learned CIT(A) has erred in law and on facts in upholding the addition of Rs. 1,92,646/- on account of low withdrawals.*

11. *The learned CIT(A) has erred in law and on facts in upholding the action of the Assessing Officer in not granting deduction under Chapter VI-A of Rs. 79,506/-.*

12. *The learned CIT (A) has erred in law and on facts in sustaining the levy of interest u/s. 234A, 2348 and 234C of the Act.*

ITA No.3033/Mum/2024

1. *The learned CIT (A) has erred in law and on facts in upholding the order passed by the Assessing Officer u/s. 144 r.w.s. 147 of the Income-tax Act, 1961, which is illegal and bad in law and in violation of the principles of natural justice.*

2. *The learned CIT (A) ought to have held that the reopening of the assessment by issuing of notice u/s. 148 of the Act was illegal and bad in law.*

3. *The learned CIT (A) has erred in law and on facts in passing the appellate order, which is invalid and bad in law and against the principles of natural justice.*

4. *The learned CIT(A) has erred in law and on facts in holding that the genuineness of the books of accounts cannot be relied since no return was filed u/s. 139(1) of the Act.*

5. *The learned CIT (A) has erred in law and on facts in upholding the disallowance of Rs. 36,64,801/- u/s. 40(a)(ia) of the Act.*

6. *The learned CIT(A) has erred in law and on facts in upholding the addition of Rs. 40,60,874/- being 40% of the entire receipts in the bank account.*

7. *The learned CIT(A) has erred in law and on facts in upholding the action of the Assessing Officer in not granting TDS credit of Rs. 10,300/- as appearing in Form No. 26AS of the assessee.*

8. *The learned CIT (A) has erred in law and on facts in sustaining the levy of interest u/s. 234A and 234B of the Act. Following grounds of appeal are without prejudice to each other.*

ITA No.3035/Mum/2024

Following grounds of appeal are without prejudice to each other.

1. *The learned CIT (A) has erred in law and on facts in upholding the order passed by the Assessing Officer u/s. 144 r.w.s. 147 of the Income-tax Act 1961, which is illegal and bad in law and in violation of the principles of natural justice.*

2. *The learned CIT (A) ought to have held that the reopening of the assessment by issuing of notice u/s. 148 of the Act was illegal and bad in law.*

3. *The learned CIT (A) has erred in law and on facts in passing the appellate order, which is invalid and bad in law and against the principles of natural justice.*
4. *The learned CIT(A) has erred in law and on facts in holding that the genuineness of the books of accounts cannot be relied since no return was filed u/s. 139(1) of the Act.*
5. *The learned CIT (A) has erred in law and on facts in upholding the disallowance of Rs. 8,77,250/- u/s. 40(a)(ia) of the Act.*
6. *The learned CIT(A) has erred in law and on facts in upholding the addition of Rs. 42,43,210/- being 40% of the entire receipts in the bank account.*
7. *The learned CIT(A) has erred in law and on facts in upholding the action of the Assessing Officer in not granting TDS credit of Rs. 33,545/- as appearing in Form No. 26AS of the assessee.*
8. *The learned CIT (A) has erred in law and on facts in sustaining the levy of interest u/s. 234A and 234B of the Act. prejudice to each other:*

ITA No.3034/Mum/2024

1. *The learned CIT (A) has erred in law and on facts in upholding the order passed by the Assessing Officer u/s. 144 r.w.s. 147 of the Income-tax Act, 1961, which is illegal and bad in law and in violation of the principles of natural justice.*
2. *The learned CIT (A) ought to have held that the reopening of the assessment by issuing of notice u/s. 148 of the Act was illegal and bad in law.*
3. *The learned CIT (A) has erred in law and on facts in passing the appellate order. which is invalid and bad in law and against the principles of natural justice*
4. *The learned CIT(A) has erred in law and on facts in holding that the genuineness of the books of accounts cannot be relied since no return was filed u/s. 139(1) of the Act.*
5. *The learned CIT (A) has erred in law and on facts in upholding the disallowance of Rs. 72,34,415/- u/s. 40(a)(ia) of the Act.*
6. *The learned CIT(A) has erred in law and on facts in upholding the addition of Rs. 81,20,825/- being 40% of the entire receipts in the bank account.*
7. *The learned CIT(A) has erred in law and on facts in upholding the addition of Rs. 4,80,000/- being credit entry appearing in the bank account of assessee.*
8. *The learned CIT(A) has erred in law and on facts in upholding the addition of Rs. 3,42,000/- on account of credit card expenditure on the ground that the source of payment of expenditure is not explained.*

9. *The learned CIT(A) has erred in law and on facts in upholding the action of the Assessing Officer in not granting TDS credit of Rs. 5,29,802/- as appearing in Form No. 26AS of the assessee.*

10. *The learned CIT (A) has erred in law and on facts in sustaining the levy of interest u/s. 234A and 234B of the Act.*

ITA No.3036/Mum/2024

1. *The learned CIT (A) has erred in law and on facts in upholding the order passed by the Assessing Officer u/s. 144 r.w.s. 147 of the Income-tax Act, 1961, which is illegal and bad in law and in violation of the principles of natural justice.*

2. *The learned CIT (A) ought to have held that the reopening of the assessment by issuing of notice u/s. 148 of the Act was illegal and bad in law.*

3. *The learned CIT (A) has erred in law and on facts in passing the appellate order, which is invalid and bad in law and against the principles of natural justice.*

4. *The learned CIT(A) has erred in law and on facts in holding that the genuineness of the books of accounts cannot be relied since no return was filed u/s. 139(1) of the Act.*

5. *The learned CIT (A) has erred in law and on facts in upholding the addition of Rs. 51,08,500/-on account of unexplained cash deposits in bank account*

6. *The learned CIT(A) has erred in law and on facts in upholding the action of the Assessing Officer in not granting TDS credit of Rs. 17,955/- as appearing in Form No. 26AS of the assessee.*

7. *The learned CIT (A) has erred in law and on facts in sustaining the levy of interest u/s. 234A and 234B of the Act.*

2. To draw the brief facts, we take the case for Assessment Year 2009-10. As can be seen, issues involved in the set of these five appeals are common and hence are disposed of by this consolidated order.

3. Briefly stated, the facts are that assessee is a dress designer by profession. Assessee did not file her return of income u/s. 139 of the Act which led to issuing of notice u/s. 148 dated 12.08.2014.

4. At the outset, it is noted that assessment has been completed u/s.144 r.w.s. 147 vide order dated 31.03.2016 by making various additions and disallowances. Even before ld. CIT(A), several opportunities were given to the assessee, to make necessary explanations and submissions in support of the grounds of appeal, so taken. Ld. CIT(A) observed that neither during the course of assessment proceedings nor during the appellate proceedings, the assessee had submitted documentary proof supporting the entries made in her ledger accounts. He drew an adverse inference that assessee is not maintaining books of accounts and the audit undertaken could not be relied upon. The first appeal was thus dismissed, upholding the additions/disallowance made by the ld. Assessing Officer, totalling to Rs.1,46,01,304/- for Assessment Year 2009-10. Aggrieved, assessee is in appeal before the Tribunal.

5. Heard both the parties. Perused the material placed on record.

6. Before us, ld. Counsel for the assessee at the outset has prayed that the matter may be sent back to the file of ld. Assessing Officer to consider the book of accounts and evidences filed by the assessee, since they have not been considered by the authorities below. In order to explain the chronology of events and the reasons for *ex-parte* orders passed by the authorities below, ld. Counsel placed on record a brief note so as to allow the prayer made by him. The same is reproduced as under for ease of reference-

“Facts of the case and Assessing Officer's order

1) The assessee is an individual and a designer by profession. The assessee did not file its return of income u/s. 139 of the Act. Subsequently, the case of the assessee was reopened by issuing notice u/s. 148 of the Act dated 12.08.2014. The case was reopened on the ground that the assessee had made payments to various parties on account of rent, payment to contractor and professional fees amounting to Rs. 41,21,461/- however, no TDS was deducted

or TDS was deducted but not deposited to the Central Government as required u/s. 40(a)(ia) of the Act.

2) The Assessing Officer issued show cause notices dated 03.07.2015 and 10.08.2015. The assessee filed a letter asking for adjournment. Further, the Assessing Officer issued a show cause notice dated 24.02.2016. The assessee, vide letter dated 28.03.2016 filed certain details which included the return of income, audited financials and tax audit report. The assessee declared total income at Rs. 16,93,470/-.

3) The assessee, vide letter dated 29.03.2016 and 30.03.2016 filed further details to the Assessing Officer such as copy of ledger account of various expenses and rent agreements.

4) The Assessing Officer did not consider the said details and passed the assessment order dated 31.03.2016 wherein he made various additions and disallowances.

CIT(A)'s order

5) The assessee filed several details before the CIT(A). It was submitted that all the disallowances and additions made by the Assessing Officer are without any basis and without considering the documents filed before him. The assessee also submitted vouchers for labour charges. The assessee submitted ledger account of expenses. The assessee also submitted a detailed explanation as to how the disallowances and addition made by the Assessing Officer is not justified.

6) The CIT(A) held that the assessee has not filed the requisite details before the Assessing Officer. He further held that the books of accounts were audited on 25.03.2016 i.e. almost after 6.5 years from the due date of getting the accounts audited. Hence, the genuineness of the same cannot be relied upon and the only inference that can be drawn is the assessee was not maintaining books of accounts. Accordingly, he upheld the additions and disallowances made by the Assessing Officer.

Our submissions

7) It is submitted that the assessee filed audited books of accounts before the lower authorities. The books of accounts were audited on 25.03.2016. The assessee filed her return of income on 26.03.2016 declaring total income of Rs. 16,93,470/- The same were submitted to the Assessing Officer vide letter dated 28.03.2016.

8) It is submitted that the Assessing Officer has not rejected the audited books of accounts filed by the assessee and made certain additions/disallowances on the basis of the audited books of accounts. It is submitted that the CIT(A) has drawn an inference that the assessee is not maintaining books of accounts since the assessee did not file return of income u/s. 139 of the Act and did not get her books of accounts audited in time. The CIT(A) has also not rejected the books of accounts and upheld the additions/ disallowances made by the Assessing Officer.

9) It is submitted that the assessee is a lady individual and a designer by profession. During the relevant period, the assessee tried to expand her business and opened one shop in Delhi and three showrooms in Mumbai on rental basis which resulted in huge rental expenditure. However, the expected sales were not achieved and the assessee came in severe financial crunch and had to close the down the Delhi shop. It is submitted that the assessee, being in financial crunch, was trying to manage her business effectively as a result, the books of accounts maintained by the assessee remained to be audited and no return was filed u/s. 139 of the Act.

10) It is submitted that the assessee regularly maintains her books of accounts. It is evident from the audited books of accounts that the major portion of expenditure debited to the profit and loss account comprises of rent paid. It is submitted that payment of rent debited to the profit and loss account is on the basis of rental agreement. The payment for the same has been made through cheque. The assessee has also deducted TDS while making the rent payment and filed TDS returns with the department. It is submitted that all the remaining expenditure, except labour charges, have been paid by cheque. It is submitted that the payment of labour charges is made in cash. The assessee has submitted vouchers duly signed by each labourer. It is submitted that the expenses incurred and debited to the profit and loss account are duly backed by supporting documents and payments made have been made by cheque. Hence, it cannot be inferred that the books of accounts were not maintained merely because the same remained to be audited.

Disallowances/ addition made by the Assessing Officer

11) During the course of assessment proceedings, the assessee, vide letter dated 29.03.2016 submitted copies of ledger accounts of various expenses. Further, the assessee, vide letter dated 30.03.2016 submitted the rent agreements entered into with various parties.

12) The Assessing Officer has made the disallowances and addition without considering the documents filed by the assessee and without application of mind. The Assessing Officer, in some cases, has made a double disallowance of expenditure eg: rent expenditure has been disallowed u/s. 40(a)(ia) of the Act on the ground that TDS has not been deducted. The same expenditure has also been considered while making disallowance of unexplained expenses. It is further submitted that the disallowance of rent u/s. 40(a)(ia) of the Act made by the Assessing Officer is more than the rent expenditure claimed in the profit and loss account. The CIT(A) has merely upheld the action of the Assessing Officer without discussing the merits of the disallowances and addition made.

13) It is submitted that the evidences filed by the assessee have not been considered by the lower authorities. In view of the above, it is humbly prayed that the matter may be sent back to the Assessing Officer to consider the books of accounts and evidences filed by the assessee.”

7. Per contra, Ld. Sr. DR objected on the plea of the Ld. Counsel since conduct of assessee has been non-cooperative.

8. It is a fact on record that assessee filed her return in response to notice u/s 148 only on 26.03.2016 and made her submissions on 28.03.2016 and on 30.03.2016, that is at the fag end of the limitation period due to expire on 31.03.2016, leaving very little time for the ld. Assessing Officer to complete the assessment effectively and efficiently. In such set of facts and explanations furnished by the ld. Counsel extracted above, we find it appropriate to accept the prayer made by him to remit the matter back to the file of the Ld. Assessing Officer for *denovo* meritorious adjudication by passing a speaking order. By taking note of the conduct of the assessee at all the stages of the proceedings before the authorities below, we are compelled to direct the assessee to be diligent and cooperative in attending the hearings and make her submissions for expeditious and effective disposal of the matter. She should not seek adjournments unless warranted by compelling reasons.

9. Since the matter is restored to the file of Ld. Assessing Officer for meritorious adjudication by passing a speaking order in terms of our observations made hereinabove, we are not expressing any views on the merits of the case so as to limit the assessment procedure before the Ld. Assessing Officer. The observations herein made by us in remanding the matter back to the file of Ld. Assessing Officer will not impair or injure the case of the Revenue nor will it cause any prejudice to the defense/explanation of the assessee.

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

Order is pronounced in the open court on 26 July, 2024

Sd/-
(Amit Shukla)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 26 July, 2024

Copy to :

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai