

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH
MUMBAI
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER
ITA No. 534/MUM/2024
(A.Y.2017-18)

Anil Tukaram Waghmare, D 702, Plot No.79/80, Green Heritage, Sector 20, Kharghar Navi Mumbai-410210.	Vs.	DCIT 3 rd Floor, Aayakar Bhavan, Opp Khanda Colony, New Panvel, Navi Mumbai-410206.
PAN/GIR No. AASPW9600J		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

Assessee by	Shri.Dharan Gandhi.AR
Revenue by	Shri.Manoj Kumar Sinha, Sr. DR

सुनवाई की तारीख/Date of Hearing	08.08.2024
घोषणा की तारीख/Date of Pronouncement	12.08.2024

ORDER

PER PAVAN KUMAR GADALE, JM:

The appeal is filed by the assessee against the order of National Faceless Appeal Centre (NFAC) Delhi/CIT(A), passed u/sec 144 and u/sec 250 of the Act.

2. At the time of hearing, it was brought to the knowledge of the bench, that there is a delay of 43 days in filing the appeal before the Hon'ble Tribunal and the assessee has filed an affidavit for condonation of delay. Whereas, the facts mentioned in the affidavit are reasonable and the Ld.DR has no specific objections. Accordingly, we condone the delay and admit the appeal.

3. The assessee has raised the following grounds of appeal:

1 Ld. CIT (A), erred in facts and in law by confirming additions of Rs. 42,06,055/- Us 69A towards cash deposits for A.Y. 2017 18 without considering the fact that the appellant had also withdrawn cash from bank during A.Y. 2017-18 and the appellant had also received contract charges in cash.

2. Ld. CIT (A), erred in facts and in law by confirming additions of Rs 36,03,000/- Us 68 towards cash credit as the appellant could not submit the Loan confirmations and other relevant documents from various parties due to non-availability of the Loan parties during the assessment proceedings.

3. Ld. CIT (A), erred in facts and in law by confirming additions of Rs 2,25,500/- under the head income from house property in spite of the fact that the appellant had already offered the rent income of Rs. 1,84,500/- under the head income from business and profession. Further the LD AO had wrongly considered rent income of Rs.2,25,500/- whereas the appellant had actually received rent of Rs.1,84,500/-.

4. Ld. CIT (A), erred in facts and in law by confirming additions of Rs 30,474/- under the head income from other sources even though the appellant had filed return of income during the assessment proceedings. The LD AO did not assessed the income offered by the appellant in the return of income filed by the appellant during the assessment proceedings.

5. Ld. CIT (A), erred in facts and in law by confirming additions of Rs 97,58,636/- as unexplained income without considering the fact that the amount credited in various bank were through various other bank account of the appellant and other credits.

6. Ld. CIT (A), erred in facts and in law by confirming additions under various heads of income while passing the order u/s 144 without assessing the Income offered by the appellant shown in the return of income filed by the appellant during the assessment proceedings.

7. The LD CIT (A), erred in law and on facts by confirming the additions on all the receipts of the appellant whereas the information made available to the LD AO was only pertains to the Rs. 10,50,000/- only.

4. The brief facts of the case are that, the assessee is engaged in the contract works and derives income from house property and income from business. The Assessing Officer (A.O) has received information as per AIMS Module, that the assessee has made cash deposits during F.Y.2016-17 aggregating to Rs. 10,50,000/- in the bank accounts in the Karnataka Bank Ltd. The assessee has not filed the return of income for A Y 2017-18 and the AO has issued notice u/sec 142(1) of the Act and there was no compliance. Further the AO has issued final show cause notice and invoked the provisions of Sec. 144 of the Act. The AO has also issued notice u/s 133(6) of the Act on the bank and obtained the bank statements. Whereas the assessee has made partial compliance supporting the credits in the bank account. Finally, the A.O was not satisfied with the information/ explanations and relied on the information available on record and made (i) addition of unexplained cash deposits u/sec 69A of the Act of Rs.

42,06,055/- (ii) Unexplained cash credits/ unsecured loans u/sec 68 of the Act of Rs. 36,03,000/- (iii) addition of rent under house property income of Rs. 2,25,500/-, (iv) addition on interest income under income from other sources of Rs.30,474/- and (v) unexplained income credited in the bank accounts aggregating to Rs. 97,58,636/- and the A.O has assessed the total income of Rs.1,78,23,670/- and passed the order u/sec 144 of the Act dated 15.11.2019.

5. 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 sustained the additions made by 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.

6. At the time of hearing, the Ld.AR submitted that the CIT(A) has erred in confirming the action of the Assessing officer overlooking the information of the assessment proceedings. Further the assessee has a good case on merits and shall substantiate with the material evidences and prayed for an opportunity to explain before the lower authorities. Per Contra, the Ld. DR supported the order of the CIT(A).

7. 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 appearance in spite of providing adequate opportunity of hearing and the notices were issued on various dates but there was no compliance to the notices. 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 19-01-2021, 31-08-2023, 11-09-2023 and 20-09-2023 referred at Page 4 Para 4 of the order but there was no due compliance 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, circumstances 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. 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.

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

Order pronounced in the open court on 12.08.2024

Sd/-
(GIRISH AGRAWAL)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated: 12/08/2024

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