

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH  
MUMBAI  
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &  
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER  
ITA No. 3172/MUM/2024  
(A.Y.2011-12)

Aftar Mannan Shaikh, 12 <sup>th</sup> Floor, EE Heights, 12 <sup>th</sup> Floor, Beside KFC, SV Road, Jogeshwari (West), Mumbai-400102..	Vs.	ACIT – 31(1) C-11, 7 <sup>th</sup> Floor, Pratyakshakar Bhavan, BKC (E), Mumbai-400051.
PAN/GIR No. BENPS2128R		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

Assessee by	Shri Vimal Punmiya.AR
Revenue by	Shri Manoj Kumar Sinha, Sr. DR

सुनवाई की तारीख/Date of Hearing	07.08.2024
घोषणा की तारीख/Date of Pronouncement	09.08.2024

**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 143(3) and u/sec 250 of the Act. The assessee has raised the following grounds of appeal:

*1 The learned assessing officer erred in facts and law by making an addition of Rs.87,90,401/- and thereby enhancing the income of the appellant.*

*2) The learned Assessing officer erred in treating Rs. 87,90,401/- as the unexplained loans, which in fact were the receipts from the person who had booked the flat in the project wherein appellant is a partner.*

*3) The learned assessing officer erred in adding amounts as unexplained loans u/s. 68 of Income Tax Act.*

*4) The assessing officer erred in not giving proper opportunity of being heard to the appellant.*

*5) Your appellant craves leave to add, amend, delete or alter any of the grounds of appeal before or during the hearing of the appeal.*

2. The brief facts of the case that, the assessee is a contractor and derives income from firm and income from salary. There was a survey operations u/s 133A of the Act at the business premises and the assessee has not filed the return of income u/s 139(1) of the Act . Therefore the Assessing Officer (AO) has reason to believe that the income has escaped assessment and issued notice u/sec148 of the Act. In compliance to the notice, the assessee has filed the return of income on 13.06.2014 for the A.Y 2011-12 disclosing a total income of Rs. 3,00,000/-.Subsequently notice u/sec 143(2) and u/sec142(1) of the Act along with the questionnaire was issued. In compliance to notice, the Ld. AR of the assessee appeared from time to time and submitted the financial statements and the information supporting the claim. The AO on perusal of the details found that the assessee has received the remuneration from the partnership firm and claimed exemption u/sec 10(2A) of the Act. Further the assessee has obtained unsecured loans from the parties during the financial year 2010-11 and the A.O has called for the information to substantiate the identity,

genuineness and credit worthiness of unsecured loan creditors. The assessee has filed the partial information. Whereas the AO was not satisfied with the information and observed that the assessee has failed to prove the identity, creditworthiness and genuineness of the loan transactions and made addition of Rs.87,90,401/- as unexplained cash credit u/sec68 of the Act and assessed the total income of Rs. 90,90,400/- and passed the order u/sec 143(3) r.w.s 147 of the Act dated 27.03.2015.

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 proper compliance by the assessee to notices. Therefore the CIT(A) considering the information on record has sustained the additions made by the A.O. Aggrieved by the order of the CIT(A), the assessee has filed an appeal before the Hon'ble Tribunal.

4. 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).

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 proper compliance 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 referred at Page 7 Para 5,2 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 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.

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

Order pronounced in the open court on 09.08.2024

Sd/-  
**(GIRISH AGRAWAL)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(PAVAN KUMAR GADALE)**  
**JUDICIAL MEMBER**

Mumbai, Dated: 09/08/2024  
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