

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

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI SUNIL KUMAR SINGH (JUDICIAL MEMBER)**

**ITA No. 2905/MUM/2024
Assessment Year: 2009-10**

Manish P. Lathia, HUF
11-B, Shri Lal Ashish Garodia Nagar,
Ghatkopar (East),
Mumbai-400077.

PAN NO. AAHEM 8671 B
Appellant

ITO-27(2)(2),
Mumbai.

Vs.

Respondent

Assessee by : Mr. Mehul Shah
Revenue by : Mrs. Mahita Nair, Sr. DR

Date of Hearing : 07/08/2024
Date of pronouncement : 19/08/2024

ORDER

PER OM PRAKASH KANT, AM

This appeal by the assessee is directed against order dated 07.05.2024, passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment year 2009-10, raising following grounds:



1. On the facts, and in circumstances of the case, and in law, learned Commissioner of Income-tax (Appeal) erred in not giving opportunity to rectify defect in filing the appeal.

2. On the facts, and in circumstances of the case, and in law, the Assessing Officer erred in imposing penalty under section 271 (1) (c) of the Income-tax Act 1961 without appreciating that the notice initiating penalty under section 274 read with section 271 (1) (c) was bad in law.

3. On the facts, and in circumstances of the case, and in law, the Assessing Officer erred in imposing penalty under section 271 (1) (c) of the Income-tax Act 1961 amounting to RS 104,296 being tax sought to be evaded on estimated addition sustained @ 12.5% of alleged bogus purchases without appreciating that the addition of alleged non-genuine purchases was made on a difference of opinion; and there was neither concealment of income nor filing of inaccurate of income, as the Appellant had furnished all material particulars in support of its claim of purchases further supported by the order of MAVT Department accepting the same purchases which the Assessing Officer treated as non genuine.

4. On the facts and circumstances of the case, and in law, the Assessing Officer erred in considering education cess as part of tax although as per the definition of tax under the Income-tax Act 1961, education cess does not partake character of "Tax", and is always added to the sum of tax by virtue of the provision of relevant Finance Act.

2. Briefly stated, facts of the case are that against the penalty order dated 20.03.2019 passed by the Assessing Officer u/s 271(1)(c) of the Income-tax Act, 1961 (in short 'the Act') for assessment year under consideration, the assessee preferred appeal before the Ld. CIT(A) and filed Form No. 35 , grounds of appeal and statement of the facts etc. However, the Ld. CIT(A) has noted that assessee had attached the grounds of appeal and statement of the facts with the Form no. 35 pertaining to different assessee namely Shri Mahesh Kumar Joshi. The Ld. CIT(A) has noted in the impugned order that he provided several opportunities to the assessee to furnish the relevant documents including grounds and



statements of the facts of the case of assessee, however same was not complied and therefore, appeal was dismissed.

3. Before us, the Ld. counsel for the assessee submitted that inadvertently, the concerned authorized representative though filed the Form No. 35 correctly, but attached the grounds and statement of the facts of the other person. The various notices issued by the Ld. CIT(A) could not be complied as same were not received by the assessee . Before us, the Ld. counsel for the assessee has expressed willingness to appear before the Ld. CIT(A) and file the correct grounds of appeal , statement of facts in relation to the case of the assessee and necessary documents in support of his claim.

3.1 In light of the facts and circumstances surrounding this case, we are of the view that the matter should be adjudicated on its substantive merits rather than being dismissed on procedural lapses, specifically the non-filing of the grounds of appeal due to an error by the authorized representative. Accordingly, we hereby restore the appeal back to the Learned Commissioner of Income Tax (Appeals) for adjudication in accordance with the law. The Learned CIT(A) shall afford the assessee a reasonable opportunity of being heard. Upon receipt of the notice of hearing from the Learned CIT(A), the assessee is instructed to promptly submit the grounds of appeal along with a statement of facts pertinent to the case.



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

Order pronounced in the open Court on 19/08/2024.

**Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER**

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

Mumbai;
Dated: 19/08/2024
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