

IN THE INCOME TAX APPELLATE TRIBUNAL, "F" BENCH
MUMBAI
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIALMEMBER &
SMT. RENU JAUHRI, ACCOUNTANT MEMBER

ITA No. 2609/MUM/2024
(A.Y.2012-13)

Shri Vishal Vijay Shah, 112A, Stock Exchange Building, Dalal Street, Fort, Mumbai -400023.	Vs.	ITO, Ward-30(1)(1), Room No. 235, 2 nd Floor, Kautilya Bhavan, BKC, Bandra (East), Mumbai -400051.
PAN/GIR No. BBJPS3622P		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

Appellant by	Shri Dharmil Jhaveri.AR
Respondent by	Shri Krishna Kumar.Sr. DR

सुनवाई की तारीख/Date of Hearing	21.08.2024
घोषणा की तारीख/Date of Pronouncement	23.08.2024

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 r.w.147 and u/sec 250 of the Act. The assessee has raised the following grounds of appeal:

1. Ground No 1: Opportunity of Hearing:

The Ld CIT (Appeal) NFAC, Delhi neither given proper opportunity of hearing nor served proper show cause notice. He has send the notice on IT Portal during covid pandemic, which was remained to be attended by the assessee.

After the notice issued on 24/03/2020 no further notice received until 4 years and directly order was passed.

The Ld CIT (Appeal) NFAC, Delhi not justified in dismissing the appeal on account of non attendance.

Ground No 2: Unexplained cash credit worth Rs 73,00,000/-

The Ld CIT (Appeal) NFAC, Delhi not justified in confirming addition of Rs 73,00,000/- only on the basis of the information received from DDIT (Inv) & without doing any independent inquiry

Ground No 3: Disallowance of Chapter VI - A Deduction worth Rs 1,00,000/-

The Ld CIT (Appeal) NFAC, Delhi not justified in confirming disallowance for deduction u/s VIA for Rs 1,00,000/-

Ground No 4: Levy of interest u/s 234A, 234B and 234C:

The Ld. ITO not justified in levying interest on the above tax addition, which is in dispute.

Ground No 5: Initiation of Penalty u/s 271(1)(c) :

The Ld. ITO not justified in initiating penalty proceedings u/s 271(1)(c), when the said addition is in dispute.

Ground No 6:

We reserve our right to add, amend, alter anything stated herein above or may be stated hereinafter.

2. The brief facts of the case are that, the assessee is engaged in the business and has filed the return of income for the A.Y 2012-13 on 11.10.2012 disclosing a total income of Rs. 6,38,702/-. Subsequently, the Assessing Officer (AO) has received information from DDIT(Inv), Mumbai that the assessee has obtained bogus accommodation entries and the AO has reason to believe that the income has escaped assessment and issued notice

u/sec 148 of the Act. Further the AO has issued notice u/s 143(2) and u/sec 142(1) of the Act along with questionnaire and there was no compliance. Whereas the A.O has issued show cause notice referred at Para 3 of the order and the said notice was returned unserved by the postal authorities. Therefore, the AO considering the information on record has invoked the provisions u/sec 144 of the Act and made best judgment assessment with the addition of Rs.73 lakhs under income from other sources and assessed the total income of Rs.79,38,702/- and passed the order u/sec144 r.w.s147 of the Act dated 18.07.2019.

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 compliance by the assessee to notices.. Therefore the CIT(A) considering the information on record has confirmed the action of 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.

4. At the time of hearing, the Ld. AR submitted that the CIT(A) has not considered the facts that the assessee has received the A.O order u/sec144 r.w.s 147 of the Act and has filed the appeal before appellate authorities and due to change in the address of the assessee, the notices were not received. Further the Ld.AR emphasized that the assessee

has good case on merits with supporting evidences which goes to roots of the case and play a vital role in the decision making and prayed for an opportunity to substantiate before the lower authorities. Per Contra, the Ld. DR relied on 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 compliance nor appearance in spite of providing adequate opportunity of hearing and the notices were issued. 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 but there was no response 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 addition 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 subject to payment of cost of Rs.5000/- to the Income Tax Department within one month from the date of receipt of the order and produce the proof of payment. 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 23.08.2024

Sd/-
(RENU JAUHRI)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated: 23/08/2024

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