

IN THE INCOME TAX APPELLATE TRIBUNAL, "B" BENCH
MUMBAI
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &
SHRI OMKARESHWAR CHIDARA, ACCOUNTANT MEMBER

ITA No.99/MUM/2024
(A.Y.2017-18)

MahadevTukaramKamble Room No. 179, Chavan Chawl, Gaondevi Road, Poisar Kandivli (East), Mumbai-400101.	Vs.	ITO-Ward 33(2)(3), BKC, Bandra (East), Mumbai-400031.
PAN/GIR No. ARCPK3510A		
(अपीलार्थी/Applicant)		(प्रत्यर्थी/Respondent)

Assessee by	None
Revenue by	Shri.Ashok Kumar Ambastha.Sr.DR

सुनवाई की तारीख/Date of Hearing	26.08.2024
घोषणा की तारीख/Date of Pronouncement	27.08.2024

ORDER

PER PAVAN KUMAR GADALE, JM:

The assessee has filed the appeal against order of commissioner of Income Tax Appeal NFAC Delhi/CIT(A) passed u/sec 144 and u/sec 250 of the Income Tax Act. The assessee has raised the following grounds of appeal:

- The learned CIT(A) is not justified in estimating the income of Rs. 1,58,65,600 by adding Rs. 1,58,65,599 to the total income of the appellant for A.Y 2017-18 by treating the same as unexplained money U/s 69A of the Income Tax Act, 1961 and taxed u/s 115BBE of the act at the rate of 60Percentage. The assessee has sufficient evidences such as the pricelist of AMUL and Ledger account for purchase made during the year, Copy of Bank Statement for details of cash deposit made during the period for your reference. In Subhash Chand Sharma, Agra vs Ito-22, Agra on 31 May, 2019, Considering the facts as discussed above that the cash deposit and withdrawal in the bank account was made regularly by the assessee during the year, it is very reasonable to say that the same was business turnover and therefore only gross profit addition is justified in the facts of the present case. Hence, we are not inclined to agree with the finding of the Ld. CITA.*

2.The brief facts of the case are that, the Assessing Officer(A.O) has received information that the assessee in the financial Year 2016-17 has made cash deposits aggregating to Rs.1,58,65,599/- which includes cash deposits of Rs. 23,75,620/- during the demonetization period in the bank account maintained with the Bank of Maharashtra Kandivali (East) branch,Mumbai. The Assessing Officer has issued notice u/sec 142(1) and there was no compliance. Further the AO has issued notice u/sec 133(6) of the Act on the bank to furnish the bank statements of the assessee and the A.O has also issued

final show cause notice dated 23-09-2019 to the assessee, to substantiate the sources of cash deposits in the bank account and the assessee has not furnished the information nor complied with the show cause notice. Since, the assessee could not file the details and information on the disputed issues in spite of providing adequate opportunity of hearing. As per information available including the bank statements received from Bank of Maharashtra, the AO has invoked the provisions of section 144 of the Act and made best judgement assessment with addition of Rs.1,58,65,599/- under section 69A of the Act and assessed the total income of Rs.1,58,65,600/- and passed the order u/sec 144 of the Act on dated 09/12/2019.

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 Assessment Order and has issued notice of hearing on various dates and since there was no compliance by the assessee to notice. 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. At the time of hearing, none appeared on behalf of the assessee and the Ld. DR relied on the order of the CIT(A).

4. We heard the Ld.DR submissions and perused the material on record. Prima-facie the CIT(A) has passed order considering the facts 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 CIT(A) has issued notice of hearing on 23.03.2021, 06.07.2023, 02.08.2023, 14.08.2023 and 22.08.2023, referred at Page 4 Para 4 of the CIT(A) order and there was no response and thus the 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.

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

Order pronounced in the open court on 27.08.2024.

Sd/-
(OMKARESHWAR CHIDARA)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated: 27/08/2024

Poonam,
Steno

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