

IN THE INCOME TAX APPELLATE TRIBUNAL “E” BENCH MUMBAI

**BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No. 1738 & 1759/MUM/2024
Assessment Year: 2011-12**

Eqball Siingh Mattharu, Office No.109, Vinay Bhavya Complex, Kalina CST Road, Santacruz East, Mumbai – 400098 (PAN : AAGPM4611D)	Vs.	Income Tax Officer – 15(2)(4), Mumbai
(Appellant)		(Respondent)

Present for:

Assessee : Shri Madhur Agrawal, Advocate
Revenue : Shri P.D. Chougule, Sr. DR

Date of Hearing : 29.08.2024
Date of Pronouncement : 29.08.2024

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

These two appeals filed by the assessee are against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi, vide order no. ITBA/NFAC/S/250/2023-24/1060612562(1), dated 07.02.2024 passed against the assessment order passed by Income Tax Officer, Ward 15(2)(4), Mumbai, u/s. 143(3) of the Income-tax Act (hereinafter referred to as the “Act”), dated 21.04.2014 for Assessment Year 2011-12.

2. At the outset, ld. Counsel for the assessee pointed out that one of these two appeals is to be disposed as infructuous, since both are identical appeals, one filed in the physical form and other in the electronic mode. Grounds raised by the assessee in both the appeals are identical. Accordingly, ld. Counsel pointed out that appeal in ITA No.1738/Mum/2024, filed in physical form may be disposed as infructuous and the second one in ITA No.1759/Mum/2024, filed electronically be adjudicated upon.

3. We have perused the appeal folder in both the appeals and agree with the submissions made by the ld. Counsel in this respect. Ld. Sr.DR had no objections on the same. Accordingly, appeal in ITA No.1738/Mum/2024, filed in physical mode is dismissed as infructuous.

4. In respect of the second appeal, ld. Counsel for the assessee prayed that the matter may be remitted back to the file of ld. CIT(A) for *denovo* meritorious adjudication, since the order of the ld. CIT(A) is *ex-parte*. The issues raised in the appeal relates to addition on account of cash recovered from thief at Rs.61,96,323/- by treating it as unexplained cash, addition of Rs.15,85,497/- towards cash generated from sale of material recovered from thief, which according to the assessee has already been offered to tax, addition of Rs.11 lakhs in respect of deposit of cash in the bank account which are claimed to have been done out of withdrawals from the bank and the additions in respect of disallowances made u/s 40(a)(ia).

5. Ld. CIT(A) had observed that no details or evidences were filed to rebutte the findings of the ld. Assessing Officer on the above stated issues. In absence of corroborative material and explanations

substantiating the claim, ld. CIT(A) drew the inference against the assessee and sustained the additions/disallowances made by the ld. Assessing Officer.

6. Before us, ld. Counsel for the assessee submitted that the issue in respect of additions towards recovery made from the thief required certain documentary evidences relating to FIR lodged by the assessee, which could not be placed before the authorities below. Also, in respect of disallowances made u/s. 40(a)(ia), details relating to TDS deposited are now available with the assessee. Ld. Counsel for the assessee assured that once the matter is remitted back to the file of ld. CIT(A), all the necessary documentary evidences along with explanation would be furnished to substantiate the claim of the assessee. However, ld. Sr. DR objected upon the prayer so made.

7. Considering the facts and circumstances of the case and in the interest of justice and fair play, we find it appropriate to accept the prayer made by the ld. Counsel. We thus, remit the matter back to the file of ld. CIT(A) for *denovo* meritorious adjudication on the grounds of the appeal taken at the first appellate stage. We also direct the assessee to be diligent and cooperative in attending the hearings and make its submissions for expeditious and effective disposal of the appeal. It should not seek adjournments unless warranted by compelling reasons.

7.1. Since the matter is restored to the file of Ld. CIT(A) for meritorious adjudication by passing a speaking order in terms of our observations made hereinabove, we are not expressing any views on the merits of the case so as to limit the appellate procedure before the Ld. CIT(A). The observations herein made by us in remanding the matter back to the file of Ld. CIT(A) will not impair or injure the case of the Revenue nor will it cause any prejudice to the defense/explanation of the assessee.

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

Order is pronounced in the open court on 29 August, 2024

Sd/-
(Anikesh Banerjee)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 29 August, 2024

MP, Sr.P.S.

Copy to :

- 1 The Appellant
- 2 The Respondent
- 3 DR, ITAT, Mumbai
- 4 Guard File
- 5 CIT

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai