

IN THE INCOME TAX APPELLATE TRIBUNAL, "B" BENCH
MUMBAI

BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &
SHRI OMKARESHWAR CHIDARA, ACCOUNTANT MEMBER

ITA No.3534/MUM/2024
(A.Y.2013-14)

Navbharat Builders, 323/A-2, Behind HotelAnugraha, New Shahupuri, Kolhapur-416001. Maharashtra	Vs.	ACIT-Circle-22(1). PiramalChambers, Lalbaugh. Mumbai-400012.
PAN/GIR No. AABFN1159L		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

Appellant by	Shri. Prashant Ghumane.AR
Respondent by	Shri. Ashok Kumar Ambastha. Sr. DR

सुनवाई की तारीख/Date of Hearing	02.09.2024
घोषणा की तारीख/Date of Pronouncement	05.09.2024

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

"1.THE ORDER BAD, ILLEGAL AND WITHOUT JURISDICTION

1.1 In the facts and the circumstances of the case, and in law, the appellate order framed by the Commissioner of Income tax (Appeals), National Faceless Appeal

Centre (NFAC), Delhi, [Ld. CTT (A)] is bad, illegal and without jurisdiction, as the same is framed in breach of the statutory provisions and the scheme and as otherwise also is not in accordance with the law.

1.2 Otherwise also, in the facts and the circumstances of the case, and in law, the appellate order so framed by the Ld. CIT (A) is bad and illegal void as the same is arbitrary and perverse.

2. NATURAL JUSTICE

2.1 It is submitted that, in the facts and the circumstances of the case, and in law, the appellate order so framed be held as bad and illegal, as:

(i) The same is framed in breach of the principles of Natural Justice; and

(ii) The same is passed without application of mind to the facts and the submissions brought on record by the Appellant.

2.2 Without prejudice to the generality of the above ground, in the facts and the circumstances of the case, the appellate order is bad and illegal as the Ld. CIT (A) erred in not granting proper, sufficient and adequate opportunity of being heard to the Appellant while passing the appellate order.

3. EX-PARTE ORDER

3.1 The Ld. CIT (A) erred in passing the order ex - parte.

3.2 While doing so, the Ld. CIT (A) failed to appreciate that the non-attendance /non- reply was for the reasons not attributable to the Appellant/ beyond the control of the Appellant and not deliberate or intentional.

3.3 *It is submitted that in the facts and the circumstances of the case, and in law, no such action was called for.*

WITHOUT PREJUDICE TO THE ABOVE

4. *ADDITION OF 41,16,50,000/- AS ALLEGED UNEXPLAINED CREDIT ENTRIES*

4.1 *The Ld. CIT (A) erred in confirming the action of the A.O, in making the addition of Rs. 41,16,50,000/- on account of alleged unexplained credit entries in the books of accounts of the Appellant.*

4.2 *It is submitted that in the facts and the circumstances of the case, and in law, no such addition was called for.*

4.3 *Without prejudice to the above, assuming but not admitting that some addition was called for, the Ld. CIT (A) failed to appreciate that the computation of the addition was arbitrary, excessive and not in accordance with the law.*

WITHOUT PREJUDICE TO THE ABOVE

5. *ADDITION OF RS. 1,62,85,405/- AS ALLEGED INCOME FROM OTHER SOURCES/UNDISCLOSED INCOME*

5.1 *The Ld. CIT (A) erred in confirming the action of the A.O. in making the addition of Rs. 1,62,85,405/- as alleged income from other sources / undisclosed income.*

5.2 *It is submitted that in the facts and the circumstances of the case, and in law, no such addition was called for*

5.3 *Without prejudice to the above, assuming but not admitting - that some addition was called for, the Ld. CIT (A) failed to appreciate that the computation of the addition was arbitrary, excessive and not in accordance with the law.*

*WITHOUT PREJUDICE TO THE ABOVE**6. ADDITION OF RS. 1,62,85,405/- AS ALLEGED INCOME FROM OTHER SOURCES/UNDISCLOSED INCOME*

6.1 The Ld. CIT (A) erred in confirming the action of the A.O. in denying the set - off of brought forward losses of Rs. 16,82,653/- claimed by the Appellant against the income of the previous year.

6.2 It is submitted that in the facts and the circumstances of the case, and in law, no such action was called for.

6.3 Without prejudice to the above, assuming - but not admitting - that some denial of set - off was called for, the Ld. CIT (A) failed to appreciate that the computation of the same was arbitrary, excessive and not in accordance with the law.

7. LIBERTY

The Appellant craves leave to add, alter, delete or modify all or any the above ground at the time of hearing.

2. The brief facts of the case are that, the assessee is a partnership firm and is engaged in business as contractors and developers. The assessee has filed a return of income for the assessment year 2013-14. Subsequently the case was selected for scrutiny and notice u/sec 143(2) and u/sec 142(1) of the Act are issued along with questioner. In compliance, the assessee has filed the financial statements and details of works undertaken. On perusal of information, the A.O find that the assessee has disclosed sundry creditors outstanding closing balances carried forward from earlier years and has called for the explanations and details. Similarly the assessee has disclosed sundry debtors. The assessee has filed the details and information. Since there was no proper compliances on the

disputed issue, the A.O has finally has made additions and assessed the total income of Rs.42,92,18,060/- and passed order u/sec 143(3) of the act dated 31/03/2016.

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, submissions and findings of the Assessment Order and has issued notice of hearing on various dates and since there was no proper compliance in spite of providing adequate opportunity of hearing. 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 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 with the information in spite of providing

adequate opportunity of hearing and has dismissed the appeal confirming the action of the assessing officer. Since there was no proper 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 and dismissed the appeal. Whereas the assessee has raised grounds of appeal challenging the additions made by the A.O and there could be various reasons for non submissions of details which cannot be overruled. Therefore, considering the facts, circumstances 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, we 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 05.09.2024.

Sd/-
(OMKARESHWAR CHIDARA)
ACCOUNTANT MEMBER

Mumbai, Dated: 05/09/2024

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

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