

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "SMC", MUMBAI**

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER  
AND  
SHRI OMKARESHWAR CHIDARA, ACCOUNTANT MEMBER**

**ITA No.786/M/2024  
Assessment Year: 2011-12**

<b>Shri Avinash Kondaji Benke,</b> Parashuram Bhavan, Bhagat Singh Road, Dombivli (East) - 421201 <b>PAN: AHYPB0433F</b>	Vs.	<b>ITO,</b> 2 <sup>nd</sup> Floor, Rani Mansion, Murbad Road, Kalyan (West) - 421301
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Avinash Benke, A.R.  
Revenue by : Shri R. R. Makwana, SR D.R.

Date of Hearing : 19 . 08 . 2024  
Date of Pronouncement : 17 . 09 . 2024

**O R D E R**

**Per : Narender Kumar Choudhry, Judicial Member:**

This appeal has been preferred by the Assessee against the order dated 15.12.2022, impugned herein, passed by the National Faceless Appeal Center (NFAC)/ Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) under section 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2011-12.

**2.** In the instant case, the case of the Assessee was reopened for assessment u/s 147 of the Act by recording the reasons for reopening such as the Assessee has deposited cash of Rs.15,08,000/- in Rupee Co-operative Bank, however, has not offered the same for taxation and therefore the income of the Assessee remained undisclosed and escaped from assessment and accordingly notice dated 21.03.2018 u/s 148 of the Act was issued. In response the Assessee filed his return of income on

06.12.2018 declaring total income of Rs.3,58,770/-. As the Assessee as per notice u/s 148 of the Act, was required to file his return of income within 30 days from the date of issue of notice but filed the same almost after 8 & ½ months. Thereafter, various statutory notices were issued to the Assessee, in response to which the Assessee from time to time filed the relevant documents such as return of income, copy of bank statements, balance sheet, profit & loss account and capital account etc. which were perused, verified and kept on record by the Assessing Officer (AO). On considering the documents filed by the Assessee, it was observed by the AO that the Assessee is involved in advertising at various railway stations of suburban stations of central railway and western railway and books slots at various stations from central railway and Western Railway and sells to various clients and other various advertising agencies. On perusal of bank statement it is seen that the Assessee maintains two bank accounts with Rupee Co-operative Bank; one current account and the second one saving account and the total transactions in terms of deposits/credits appearing in current accounts comes to Rs.43,53,202/- and opening balance of Rs.6,17,373/- aggregating to Rs.49,70,575/- and in savings account comes to Rs.16,21,112/- and opening balance of Rs.6,463/- aggregating to Rs.16,27,575/-. On further perusal of bank statement it appears the Assessee has also deposited cash of Rs.15,08,000/- during the financial year 2010-11 in the Rupee Co-Op. Bank. The said amount was invested towards payment of premium of Life Insurance Corporation (LIC). Besides the above cash deposits and investments in LIC the Assessee has received other deposits of Rs.1,10,000/- and interest amounting to Rs.3,112/- in the bank on various dates aggregating to Rs.1,13,112/- qua payments made towards society charges, repayment of IDBI, home finance etc. During the hearing before the AO the Assessee submitted copy of the profit & loss account, balance sheet and capital account. On perusing the same it was seen by the AO that the Assessee has shown opening capital balance of Rs.19,30,600/- against which withdrawals towards LIC investment of

Rs.14,17,639/- is shown, but the argument of the Assessee cannot be accepted, as the Assessee is a non-filer and also not filed his return of income in the earlier year also. It is further seen from the bank statement that the Assessee has also made cash deposit during the proceedings. Therefore on the aforesaid analyzations and discussion the AO treated the amount of Rs.15,08,000/- deposited in the bank as undisclosed income u/s 69A of the Act. Further, by considering that the Assessee has opening balance of Rs.6,17,373/- and Rs.6,473/- in current account and saving account respectively aggregating to Rs.6,23,836/- and since the Assessee is a non-filer and has not filed his return of income in the earlier years the said bank balance of Rs.6,23,836/- in aggregate has also been treated as undisclosed income u/s 69 of the Act. Further, the Assessee has shown gross receipts from sales and services at Rs.46,68,457/- after claiming various expenses of Rs.42,09,684/- and shown the net profit of Rs.4,58,773/-. As the Assessee also failed to submit any documentary evidence in support of his claim, therefore the AO also made the disallowance of 20% on the other expenses amounting to Rs.9,58,290/- (excluding payment made to railways for Rs.32,51,394/-) which comes to Rs.1,91,658/- and added the same in the total income of the Assessee.

**3.** The Assessee, being aggrieved, challenged the aforesaid additions before the Ld. Commissioner who by impugned order affirmed the aforesaid additions. The Assessee, being aggrieved, is in appeal before us.

**4.** We have heard the parties and perused the material available on record. We observe that both the authorities below mainly doubted the transactions of the Assessee for non-filing of the original return of income for the assessment year under consideration. Whereas the Assessee has submitted that though the Assessee has filed his return of income but somehow his previous Counsels/Tax Consultant failed to file the Income Tax Return acknowledgment before the AO and the Ld. CIT (A) and

therefore they decided the case of the Assessee mainly on the reason that the Assessee has not filed his return of income for the assessment year under consideration whereas facts are contrary, hence the case may be remanded to the file of AO with direction to provide an opportunity to the Assessee to substantiate his claim . Considering the claim of the Assessee as bonafide and reasonable, the case is remanded to the file of the AO for decision afresh accordingly. The Assessee is also directed to submit ITR acknowledgement dated 30.11.2011 as well as relevant Income Tax Return documents along with specific affidavit qua filing of return of income for the assessment year under consideration. The AO, on finding the affidavit or claim qua filing of original return of income for the AY under consideration as false or misleading, would be at liberty to take appropriate action, if any requires, as per law.

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

**Order pronounced in the open court on 17.09.2024.**

**Sd/-  
(OMKARESHWAR CHIDARA)  
ACCOUNTANT MEMBER**

**Sd/-  
(NARENDER KUMAR CHOUDHRY)  
JUDICIAL MEMBER**

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.