

IN THE INCOME TAX APPELLATE TRIBUNAL

"J (SMC)" BENCH, MUMBAI

BEFORE MS. PADMAVATHY S, ACCOUNTANT MEMBER AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.2288/Mum./2024

(Assessment Year : 2011-12)

Rajaram Ahire

Shanti Nagar, Salt Pan Road,
Wadala, Mumbai- 400037
PAN-AELPA2122A

..... Appellant

v/s

Income Tax Officer- 3(4)

2nd Floor, Rani Mansion, Murbad Road,
Kalyan - 421306

..... Respondent

Assessee by : Mrs. Naina Chaurasia

Revenue by : Shri Nagnath Pasale, Sr. DR

Date of Hearing – 27/08/2024

Date of Order –29/08/2024

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 29/02/2024, passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Addl./Joint Commissioner of Income Tax (Appeals), Gwalior, [*learned Addl./Joint CIT(A)*], for the assessment year 2011-12.

2. In this appeal, the assessee has raised the following grounds: –

"1. In view of the facts and circumstances of the case and in law, the learned CIT(A) erred in confirming the addition of Rs. 7,40,756/- made by the learned AO as undisclosed salary income from IOCL as reflected in AIR.

2. Reasons given by the learned CIT(A) for making the addition of Rs. 7,40,756/- as undisclosed salary income from IOCL as reflected in AIR are wrong insufficient and contrary to the facts and evidence on records.

3. The Assessee craves leave to add, amend, alter, modify or omit any of the aforesaid Grounds of Appeal as occasion may arise of demand."

3. The brief facts of the case are that the assessee is an individual and derived income by way of salary from Indian Oil Corporation Ltd. For the year under consideration, the assessee filed his return of income on 05/03/2012 declaring a total income of Rs.10,59,790. The return filed by the assessee was selected for scrutiny through CASS and statutory notices under section 143(2) as well as section 142(1) of the Act were issued and served on the assessee. In response to the aforesaid notices, no one appeared on behalf of the assessee. Accordingly, the Assessing Officer ("AO") proceeded to conclude the assessment on the basis of the material available on record. It was noted that as per the AIR information, the assessee was paid a salary of Rs.7,40,756 from Indian Oil Corporation Ltd, Marketing Division, Western Region, and the tax thereon was deducted and paid to the government account at Rs.1,79,442. Accordingly, notice under section 133(6) of the Act was issued to Indian Oil Corporation Ltd to furnish a copy of Form No. 16 issued to the assessee in respect of the amount paid to him during the year under consideration. However, the Indian Oil Corporation did not furnish the information sought by the AO, and accordingly, the assessment was completed under section 144 of the Act. The AO vide order dated 28/02/2014 passed under section 144 of the Act added the entire income of Rs.7,40,756.

4. The learned CIT(A) vide impugned ex parte order dated 29/02/2024, dismissed the appeal filed by the assessee and upheld the addition made by the AO. Being aggrieved, the assessee is an appeal before us.

5. During the hearing, the learned Authorised Representative ("*learned AR*") submitted that in the Appellate Proceedings before the learned CIT(A), the assessee filed details submissions on 24/01/2020 along with necessary supporting documents/evidence in support of its claim. The learned AR submitted that thereafter on 03/02/2022 the case was discussed and the learned CIT(A) requested to file an application under Rule 46A of the Income Tax Rules, 1961 ("*the Rules*") for admitting additional evidence. It is submitted that vide letter dated 03/02/2020, the assessee filed an application under Rule 46A of the Rules. The learned AR submitted that thereafter vide hearing notice dated 05/05/2022 the National Faceless Appeal Centre asked the assessee to make submissions in support of the ground of appeal. In response thereto, the assessee uploaded the soft copy of the submissions on 13/05/2022 which were filed before the learned CIT(A) earlier. It is submitted that the assessee also uploaded the application under Rule 46A with the National Faceless Appeal Centre. Thereafter the assessee also replied to the notices dated 24/11/2022 and even responded to the letter dated 05/01/2022 received from Income Tax Officer, Ward-3 (2), Kalyan with respect to remand report. The learned AR submitted that after the migration of the appeal to the learned Addl./Joint CIT(A) the assessee did not receive any notices as mentioned in the impugned order, and without considering any of the aforesaid documents, the learned Addl./Joint CIT(A) dismissed the appeal filed by the assessee vide ex-parte order. On

merits, the learned AR submitted that the entire addition is merely due to non-reconciliation of the returned income with the income shown in Form 26AS.

6. Having considered submissions and perused the material available on record, we find that the learned CIT(A) has passed the order an ex parte on the basis that the assessee has failed to respond on multiple occasions and did not provide any explanation or evidence in support of the grounds of appeal despite grant of time. From the factual paper book filed by the assessee, we find that the assessee filed written submissions before the learned CIT(A) not only during the physical hearing but also before the National Faceless Appeal Centre from time to time in response to the various notices issued. Further, the assessee also filed an application seeking admission of additional evidence under Rule 46A of the Rules. It appears that the learned CIT(A) sought remand report from the AO in respect of the additional evidence filed by the assessee, as the Income Tax Officer, Ward-3(2), Kalyan issued a letter dated 15/07/2023 in this regard, which forms part of the paper book on pages 47-48. However, it is not evident whether any remand report was submitted by the Income Tax Officer, Ward-3(2), Kalyan to the learned CIT(A). Surprisingly while deciding the assessee's appeal, the learned Addl./Joint CIT(A) did not consider any of the aforesaid submissions, and the additional evidence filed by the AO, and appears to have proceeded in haste while dismissing the appeal filed by the assessee vide ex-parte order.

7. Since the assessment was also concluded under section 144 of the Act on a best judgment basis, we are of the considered opinion that in the interest of

justice, the assessee be granted one more opportunity to represent its case on merits before the AO. Consequently, we deem it fit and proper to set aside the impugned order and restore the matter to the file of the AO for *de novo* adjudication with a direction to the assessee to furnish all the details/submissions in support of its claim. Needless to mention no order shall be passed without affording reasonable opportunity of hearing to the assessee. As the matter is being restored to the file of the AO for adjudication afresh, the other grievances raised by the assessee in the present appeal do not call for adjudication at this stage. Accordingly, grounds raised by the assessee are allowed for statistical purposes.

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

Order pronounced in the open Court on 29/08/2024

Sd/-
PADMAVATHY S
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 29/08/2024

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

By Order

Assistant Registrar
ITAT, Mumbai