

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, MUMBAI

**BEFORE SHRIOM PRAKASH KANT, AM AND
MS. KAVITHA RAJAGOPAL, JM**

ITA No.2483/Mum/2024
(Assessment Year: 2017-18)

Shri Rajesh Pranlal Ghatalia 1501/2B Wing, Highland Park CHS 350, Lokhandwala Complex, Andheri (W), Mumbai-400 053	Vs.	ITO Ward-24(3)(1) Room No. 616, 6 th Floor, Piramal Chamber, Lalbaug, Mumbai-400 014
PAN/GIR No. AACPG 2313 G		
(Assessee)	:	(Respondent)
Assessee by	:	Shri Amit & Dharmil Jhaveri
Respondent by	:	Shri R. R. Makwana
Date of Hearing	:	17.09.2024
Date of Pronouncement	:	29.10.2024

ORDER

Per Kavitha Rajagopal, JM:

This appeal has been filed by the assessee, challenging the *ex parte* order of the learned Commissioner of Income Tax (Appeals) ('ld.CIT(A) for short), National Faceless Appeal Centre ('NFAC' for short) passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2017-18.

2. The assessee has filed an application for condoning the delay of 78 days in filing the present appeal. On perusal of the same, we deem it fit to condone the said delay as there being a 'sufficient cause' for the delay in filing the appeal beyond the period of limitation. Delay condoned.

3. The assessee has raised the following grounds of appeal:

B) Grounds of Appeal :-**Ground No 1: Opportunity of Hearing:**

- ❖ *The appeal was filed in the pre face less period on 24/01/2020. Thereafter all the notices were raised on the Income Tax Portal and no physical notice has been received till date. The assessee is an individual and this been the first case for the assessee under the faceless regime.*

Ground No 2: Unexplained cash credit u/s 68 worth Rs 2,83,93,367/-

- ❖ *The Ld ITO not justified in making addition u/s 68 for the cash credit treating the same as unexplained cash credit.*
- ❖ *The said fact is incorrect as the assessee has already explained the same cash credits has been received from M/s Enam Organics Ltd and M/s Aarey Drugs & Pharmaceuticals Ltd.*
- ❖ *Hence when the nature of the credit is explained by the assessee and party from whom the same has been received is also placed on record addition u/s 68 is unjustified and unwarranted.*

Ground No 3: Levying Maximum rate of Tax:

- ❖ *The Ld. ITO not justified in levying the maximum rate of Tax @ 60% along with 25% surcharge u/s 115BBE.*

Ground No 4: Levy of interest u/s 234A, 234B and 234C:

- ❖ *The Ld. ITO not justified in levying interest on the above tax addition, which is in dispute.*

Ground No 5: Initiation of Penalty u/s 271(1)(c):

- ❖ *The Ld. ITO not justified in initiating penalty proceedings u/s 271(1)(c), when the said addition is in dispute.*

4. The brief facts are that the assessee is an individual and had filed his return of income for the year under consideration on 30.12.2017, declaring total income at Rs.8,24,760/-. The assessee's case was selected for limited scrutiny under CASS for the reason of huge cash withdrawals during the year under consideration and notices u/s. 143(2) and 142(1) of the Act were duly issued and served upon the assessee.

5. The ld. Assessing Officer ('A.O.' for short) then passed the assessment order u/s. 143(3) of the Act on 30.12.2019, thereby determining the total income at Rs.2,92,18,131/- after making additions of Rs.2,83,93,367/- as 'unexplained cash credit'

u/s. 68 of the Act on the ground that the assessee has failed to furnish any documentary evidence in support of his claim.

6. Aggrieved, the assessee was in appeal before the first appellate authority, challenging the assessment order.

7. The Id. CIT(A) vide order dated 22.12.2023, upheld the addition made by the Id.A.O. for the reason that inspite of several opportunity the assessee has failed to substantiate his claim and has been non compliant throughout the appellate proceedings.

8. The assessee is in appeal before us, challenging the impugned order of the Id. CIT(A).

9. We have heard the rival submissions and perused the materials available on record. It is observed that the assessee has challenged the additions made by the Id. A.O. before the first appellate authority but has been non compliant throughout the appellate proceeding.

10. The learned Authorised Representative ('Id. AR' for short) for the assessee contended that the assessee has got a good case on the merits and prayed that the assessee may be given one more opportunity to present his case before the Id. CIT(A). The Id. AR also prayed that the assessee may be permitted to file additional evidences in support of his claim.

11. The learned Departmental Representative ('Id.DR' for short) vehemently opposed to setting aside the issue to the file of the Id. CIT(A) for the reason that the assessee was given several opportunity by the Id. CIT(A) which was not availed by the assessee.

12. On the above factual matrix of the case, we are of the considered view that the assessee may be given one more opportunity to present his case before the first appellate authority by adhering to the principles of natural justice. We, therefore, remand all these issues back to the file of the Id. CIT(A) for *de novo* adjudication and also direct the Id. CIT(A) to admit the additional evidences that are proposed to be filed by the assessee and decide the issue on the merits of the case. The assessee is directed to comply with the proceedings without any undue delay on his side.

13. In the result, the appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court on 29.10.2024

Sd/-
(O P Kant)
Accountant Member

Sd/-
(Kavitha Rajagopal)
Judicial Member

Mumbai; Dated : 29.10.2024

Roshani, Sr. PS

Copy of the Order forwarded to :

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

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai