

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

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

**ITA No.1100/M/2024
Assessment Year: 2011-12**

Mr. Mukesh Babulal Jain 1 st Floor, Bldg. No. 10, 8 th Lane, S.P. Road, Kamathipura Mumbai - 400008 PAN: AAHPJ9957C	Vs.	Income Tax Officer - Ward 20(2)(1) Piramal Chamber, Mumbai - 400012
(Appellant)		(Respondent)

Present for:

Assessee by : Ms. Sruti Kalyanikar, Ld. AR
Revenue by : Shri Praveen Shrivastava, Ld. SR AR

Date of Hearing : 10.10.2024
Date of Pronouncement : 23.10.2024

O R D E R

Per : Narender Kumar Choudhry, Judicial Member:

This appeal has been preferred by the Assessee against the order dated 29.12.2018, impugned herein, passed by the Ld. Addl./Joint Commissioner of Income Tax (Appeals) (in short Ld. Addl./Joint Commissioner) under section 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2011-12,

2. In this case, the Assessing Officer vide assessment order under section 143(3) r.w.s. 147 of the Act has made the addition of Rs. 4,49,56,133/- as unexplained money under section 69A of the Act.

3. The assessee being aggrieved though challenged the said addition before the Ld. Commissioner, however, despite of granting opportunities through video conference, made no compliance and therefore, the Ld. Commissioner in the constrained circumstances

and in the absence of relevant reply and documents, which the assessee failed to file, decided the appeal on the basis of material available on the record and by taking into consideration the assessment order and ultimately affirmed the addition by dismissing the appeal of the assessee.

4. The assessee being aggrieved challenged the impugned order before and on being asked specifically Ld. Counsel of the assessee *"as to why the assessee could not avail the video conference facilities despite of affording opportunities"*, the Ld. Counsel for the assessee has submitted that due to mis-communication or lack of knowledge, the assessee missed the opportunities, however now undertakes to join the proceedings and to file the relevant reply and documents, if the opportunity is given to the assessee.

5. On the contrary, the Ld. DR refuted the claim of the assessee and supported the impugned order, by submitting that the same does not suffers from any perversity or impropriety and/or illegality.

6. We have heard the parties and given thoughtful consideration to the rival contention of the parties and perused the material on record. From the conduct of the assessee it prima facie appears that the assessee has non-compliant tendency and therefore, the assessee does not deserve any leniency, however considering the peculiar facts and circumstances of the case in totality, as the Ld. Commissioner in the absence of relevant reply/document, could not decide the case in its right prospective and proper manner and as now the Ld. Counsel of the assessee has given undertaking and assurance on behalf of the Assessee to comply with the notices and to file the relevant reply and documents, which would be essentially required by the Ld. Commissioner, hence for the just decision of the case and substantial justice, we are inclined to remand the instant case to the file of the Ld. Commissioner for decision afresh. Hence the case is remanded accordingly.

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

Order pronounced in the open court on 23.10.2024.

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

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

Poonam Mirashi,
Stenographer

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

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.