

आयकर अपीलीय अधिकरण
कोलकाता 'एसएमसी' पीठ, कोलकाता में
IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'SMC' BENCH, KOLKATA

श्री प्रदीप कुमार चौबे, न्यायिक सदस्य
एवं
श्री राकेश मिश्रा, लेखा सदस्य
के समक्ष
Before

SRI PRADIP KUMAR CHOUBEY, JUDICIAL MEMBER
&
SRI RAKESH MISHRA, ACCOUNTANT MEMBER

I.T.A. No.: 657/KOL/2024
Assessment Year: 2017-18

Mosarrat Jahan.....*Appellant*
[PAN: AIUPJ 7579 B]

Vs.

CIT(A), Addl. JCIT-4, Mumbai.....*Respondent*

Appearances:

Assessee represented by: Mohamad Riyad, CA.

Department represented by: S.B. Chakraborty, JCIT, Sr. DR.

Date of concluding the hearing : August 21st, 2024

Date of pronouncing the order : November 6th, 2024

ORDER

Per Pradip Kumar Choubey, Judicial Member:

This appeal filed by the assessee pertaining to the Assessment Year (in short 'AY') 2017-18 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the 'Act') by Id. Commissioner of Income-tax (Appeals)-4, Mumbai [in short Id. 'CIT(A)'] dated 01.02.2024 arising out of the assessment order framed u/s 143(3) of the Act dated 20.11.2019.

1.1. The brief facts of the case of the appellant are that the assessee being an individual filed return of income for AY 2017-18 declaring total income of Rs. 19,03,250/-. The return was duly processed and in the course of scrutiny

proceedings, some discrepancy at Rs. 8,81,541.71/- has been brought into the notice of the Assessing Officer (hereinafter referred to as Id. 'AO'). The assessee before the Id. AO has informed that the assessee is engaged in a trading business of spinal cord therapy/massager machine and difference between purchase shown in Profit & Loss account and confirm by the creditor was basically purchase of fruits, juice, birthday celebration item and gift etc. The submission of the assessee has not been found to be tenable by the Id. AO and he assessed the income of the assessee at Rs. 28,46,146/-. The said order has been challenged before the Id. CIT(A) wherein the appeal of the assessee has been dismissed due to non-compliance from the assessee.

1.2. The sole contention of the Id. Counsel for the assessee is that Id. CIT(A) instead of deciding the issue on merit had dismissed the appeal in limine. The Id. Counsel for the assessee submits that assessee has balance sheet, profit and loss account that goes to establish the business of the assessee and the purchase and expenses. The Id. Counsel for the assessee submits that the assessee should be given an opportunity to place all these materials before the Id. AO as it relates to the calculation and assessment. The Id. Counsel for the assessee submits that the assessee being an individual due to some reasonable reason could not be able to appear before the Id. CIT(A) nor could be able to file all those papers which were lying with her Counsel.

1.3. Contrary to that the Id. D/R supports the impugned order.

2. We have perused the record and find that before the Id. AO the assessee has filed his show cause notice and submits that difference between purchase shown in Profit & Loss account was basically purchase of fruits and other items. His submission had not been found to be tenable by the Id. AO. Id. CIT(A) has dismissed the appeal of the assessee only on this ground that there was no response in spite of several notices to the assessee. The submission of the Id. Counsel for the assessee is that the assessee possesses sufficient papers to establish his case and his prayer is to afford an opportunity to place all those papers before the Id. AO.

3. Keeping in view the above facts, we are in this view that the assessee should be given an opportunity to place all those materials which he wants in order to establish the dispute before the Id. AO. Accordingly, the order of Id. CIT(A) as well as Id. AO is hereby set aside, case record is restored to the file of the Id. AO. Id. AO is directed to hear the matter afresh and decide the case on merit after going over the papers filed by the assessee. The assessee is also directed to place all those papers without taking any frivolous adjournment.

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

Order pronounced in the open Court on 6th November, 2024.

Sd/-

[Rakesh Mishra]

Accountant Member

Sd/-

[Pradip Kumar Choubey]

Judicial Member

Dated: 06.11.2024

Bidhan (P.S.)

Copy of the order forwarded to:

1. **Mosarrat Jahan, 4B/5, Topsia 2nd Lane, 700039.**
2. **CIT(A), Addl. JCIT-4, Mumbai.**
3. CIT(A)-
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File.

//True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata