

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, AHMEDABAD**

**BEFORE SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER &
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 871/Ahd/2023
(निर्धारण वर्ष / Assessment Year : 2017-18)

Agrawal Rajeshkumar Babulal, HUF Prop.- Shri Mahavir Trading Co., Atiqbalgadh, Ta. Amirgadh B.K., Gujarat - 385130	बनाम/ Vs.	The ACIT Circle - Palanpur Present ACIT Circle - Gandhinagar,
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. : AACHA5546K		
(Appellant)	..	(Respondent)

अपीलार्थी ओर से/Appellant by :	Shri Chetan Agarwal, A.R.
प्रत्यर्थी की ओर से/Respondent by:	Shri Rignesh Das, Sr. DR

Date of Hearing	14/10/2024
Date of Pronouncement	08/11/2024

ORDER

PER SHRINARENDRA PRASAD SINHA, AM:

This appeal is filed by the assessee against the order of the National Faceless Appeal Centre (NFAC), Delhi, (in short ‘the CIT(A)’), dated 12.09.2023 for the Assessment Year 2017-18.

2. The brief facts of the case are that the assessee is HUF engaged in the business of commercial crop in the proprietorship concern M/s. Shree Mahavir Trading Co. The

return of income for A.Y. 2017-18 was filed on 07.07.2018 declaring Nil income. The case was selected for complete scrutiny under CASS. The assessment was completed under Section 143(3) of the Income Tax Act, 1961 (in short ‘the Act’) on 31.12.2019 at total income of Rs.5,12,74,637/- by making the following additions:

<i>(i) Profit transferred to others</i>	<i>Rs.3,73,59,007</i>
<i>(ii) Disallowance of interest u/s. 37</i>	<i>Rs.1,18,36,232</i>
<i>(iii) Disallowance of godown rent</i>	<i>Rs.20,79,398</i>

3. Aggrieved with the order of the AO, the assessee had filed an appeal before the First Appellate Authority, which has been decided vide the impugned order and the appeal of the assessee was dismissed.

4. Now, the assessee is in second appeal before us. The following grounds of appeal have been taken in this appeal:

- “1. Learned CIT(A) has erred in law as well on facts in dismissing ex-parte.*
- 2. Learned CIT(A) has erred in law as well on fact in confirming the addition of Rs.5,12,74,637/- made by ld. AO.”*

5. Shri Chetan Agarwal, Ld. AR appearing for the assessee explained that the Ld. CIT(A) has passed the order ex-parte as no compliance could be made by the assessee before him. He explained that the issue involved in this case requires examination of facts. He, therefore, requested that the matter may be set aside to the file of Ld. CIT(A) with a direction to

allow another opportunity to the assessee. The Ld. AR assured that the assessee will certainly make compliance before the Ld. CIT(A), if another opportunity is allowed to him.

6. Per contra, Shri Rignesh Das, the Ld. Sr. DR supported the order of the Ld. CIT(A).

7. We have carefully considered the rival submissions. It is found that the additions made by the AO was based on appreciation of the facts of the case. The addition of Rs.3,73,59,007/- on account of profit transferred to other person was based on the fact that the assessee had claimed to have entered into purchase and sale transactions of castor seeds on behalf of the other persons. The AO had treated the difference between purchase and sale transactions as commission derived by the assessee. The Ld. CIT(A) had confirmed the addition for the reason that no evidence in the form of challan, copy of invoice, storage notes etc. was brought on record to establish that the transactions were entered into on behalf of the other persons.

7.1 The next addition of Rs.1,18,36,232/- in respect of interest payment was made by the AO for the reason that the ledger account of Shree Bharat Trading Co. to whom this payment was made, was showing debit balance. The Ld. CIT(A) has given a finding that the assessee had passed a cumulative entry on 31.10.2016, which was not substantiated with any documentary

evidence. Therefore, the addition made by the AO was confirmed by him.

7.2 The 3rd addition of Rs.20,79,398/- in respect of Godown rent was made by the AO for the reason that the goods were purchased and sold on the same day and, therefore, there was no requirement of godown. The Ld. CIT(A) has observed that neither requirement of godown was established nor any rental agreement or any documentary evidence in this respect was brought on record. Hence, the addition made by the AO was confirmed.

8. It is, thus, found that all the additions made by the AO can be adjudicated only after examining the documentary evidences as mentioned in the order of the Ld. CIT(A). Since, the matter was not examined on merits, as the assessee didn't make any compliance in the appellate proceeding, **we deem it proper to set aside the matter to the file of the Ld. CIT(A) with a direction to allow another opportunity to the assessee to furnish the required documents and thereafter to decide the matter on merits.** The assessee is also directed to produce the necessary evidences in support of the grounds taken before the Ld. CIT(A) and not to seek any unnecessary adjournments. In case, the assessee doesn't comply before the Ld. CIT(A), he will be free to decide the matter in the manner as deemed fit.

9. It is noted that the assessee has not explained the reason for non-compliance before the Ld. CIT(A) in spite of repeated

opportunities provided by him. The Ld. CIT(A) had allowed four opportunities to the assessee on 11.03.2021, 05.04.2022, 07.11.2022 and on 22.08.2023 but no compliance was made by the assessee on any of the dates. It is also not the case that the notices of the Ld. CIT(A) were not received by the assessee. In the absence of any explanation for non-compliance before the Ld. CIT(A), we deem it proper to **impose a cost of Rs.10,000/- (Rupees ten thousand only) on the assessee.** The assessee shall deposit the cost to the Income Tax Department within two weeks of receipt of this order. The Ld. CIT(A) will proceed in the matter after verifying that the assessee has paid the cost, as imposed.

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

This Order pronounced on 08/11/2024

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

Ahmedabad; Dated 08/11/2024
S. K. SINHA

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

Sd/-
(NARENDRA PRASAD SINHA)
ACCOUNTANT MEMBER

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद/ ITAT, Ahmedabad