

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH MUMBAI**

**BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER &
MS. PADMAVATHY S, ACCOUNTANT MEMBER**

**ITA No. 4071/Mum/2023
(Assessment Year: 2012-13)**

Ms. Choudhari Constructions Co. 151/129, Sidharth Nagar, Road No. 5, Behind Cinemax Cinema, S.V. Road, Goregoan (W), Mumbai – 400062.	Vs.	ACIT, Circle – 31(1) Mumbai – 400020.
PAN/GIR No. AABFC2689N		
(Applicant)		(Respondent)

Assessee by	Ms. Sanjukta Samantara
Revenue by	Shri Krishna Kumar, CIT(DR)

सुनवाई की तारीख/Date of Hearing	06.11.2024
घोषणा की तारीख/Date of Pronouncement	13.11.2024

आदेश / ORDER

PER SANDEEP GOSAIN, JM:

The present appeal has been filed by the assessee challenging the impugned order 12.09.2023, passed u/s 250 of the Income Tax Act, 1961 ('the Act'), by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi ('Ld. CIT(A)'), for the assessment year 2012-13. The assessee has raised the following grounds of appeal:

1. Failure of equity and of Natural Justice:

The Id. CIT(A) erred to overlook and ought to have appreciated that there was failure of equity while passing the Order u/s.143 (3) and adjudicating various claims made in the accounts Scrutiny the and the Order may be vacated.

2. Declaration made during survey intended to cover full discrepancy - no other tangible or intangible additions/disallowances are called for

The Id. CIT(A) failed to appreciate that as during declaration survey, the was made to cover full discrepancies in Books/Vouchers/Bills, when the Assessing Officer went on adding further tangible and deemed additions ignoring the pre-condition for declaration to cover lacunae in P & L A/c and Balance Sheet; hence, any further addition over and above Rs.50 lacs made may be deleted.

3. Disallowance u/s.40(a)(ia) - Rs.1,21,455/-

(i) The Id. CIT(A) erred in confirming the disallowance CIT(A) u/s.40(a)(ia) without appreciating that the recipients had declared and paid taxes on the receipt and there is less payable items of expenses which could attract the provisions of Sec.40(a)(ia) r.w.s. its provisos; hence partial disallowance is not justified on the facts and laws; therefore, addition of Rs. 1,21,455/- may entirely be deleted;

(ii) The Id. CIT(A) ought to have appreciated that second proviso to Sec. 40(a)(ia) is retrospective by nature with effect from 1.4.2005 and further failed to appreciate that the appellant is not an assessee in default u/s.201(1); therefore, confirming partial disallowance is not sustainable and the same may be deleted.

4. Ad-hoc disallowances of various expenses - Rs.50,00,000/-

(a) The Id. CIT(A) erred in confirming ad-hoc disallowances against purchases, indirect expenses and sub-contract charges without appreciating that all claims were exclusively business related supported by evidences and when the books are accepted u/s. 145, no ad-hoc and partial disallowance is permitted and the same may be deleted.

5. Disallowance u/s. 40A(3) - Rs.63,720/-

The Id. CIT(A) erred in confirming the addition u/s.40A(3) disallowance against needful cash payments without appreciating that it was under compelling circumstances; payment were made in cash and by virtue of Rule 6DD; the same being exclusively business related were justified; therefore, disallowance is uncalled for and the same may be deleted.

6. Addition u/s.50C - Rs. 16,56,000/-

a) The Id. CIT(A) erred in confirming the deemed addition u/s. 50C on the sale of plot without appreciating that it was a distress sale falling into the exception to Sec.50C; therefore, the addition is uncalled for and the same be deleted.

b) Without prejudice to the above, in the case of distress sale, market value of property cannot be applied for computing Long Term Capital Gain in the instant case and in case of any further doubt as, the Assessing Officer failed to called for DVO Report; hence, no subjective addition is called for and the same may be deleted.

7. Levy of Penal Interest u/s. 234B, 234C and 234D The Appellant, on merits, denies its liability to penal interest.

8. The Appellant craves leave to add, amend or alter all or any of the above Grounds of Appeal.

2. At the outset, the Ld. AR appearing on behalf of the assessee requested that the matter be restored back to the file of the Ld.AO as the assessee could not represent effectively before the Ld.AO and also before the CIT(A). It was submitted that the wife of the assessee was also one of the partner in the assessee firm, however after the death of the assessee's wife the remaining serving partners were running to courts to face litigations and therefore assessee was not in a position to put proper representation or to submit required documents before the revenue authorities.

It was also submitted that the case of the assessee was being handled before the revenue authorities by a ITP who was neither a CA nor an advocate even he did not attend the proceedings. It was also submitted that the orders passed by the revenue authorities i.e Ld.AO as well as Ld.CIT(A) were virtually an ex-parte order in the absence of proper representation and also relied upon the decision in the following case laws:

1. *172 ITR 331 (MP), Mahaveer Prasad Jain Vs. CIT*
2. *181 ITR 183 (ALL), Kripa Shankar Vs. CIT*
3. *118 ITR 507, concord of India Insurance Co. Ltd Vs. Smt Nrimala Devi & Others*
4. *173 ITR 280(BOM) CIT Vs. Smt. K. Sippyy & Ors.*
5. *173 ITR 280 (AP), Berulal Tiwari Vs. CIT.*

3. On the other hand, the Ld. DR relied upon the orders passed by the revenue authorities.

4. We have heard counsels of both the parties and perused the material placed on record, judgements cited by the parties and also orders passed by the revenue authorities. From the records, we noticed that although Ld.CIT(A) has decided the appeal of the assessee on merits and has sought remand report but there is no effective representation on behalf of the assessee before both the revenue authorities. Even otherwise as per the assertions of the assessee, after death of his wife, who was the partner in assessee firm, the

remaining surviving partners were busy in facing different litigations before courts and the ITP who was handling the case of the assessee was neither CA nor advocate, therefore could not properly assist the revenue authorities in reaching to a logical conclusion. Even otherwise being a layman and under-matriculate, assessee is ignorant about the Tax laws.

5. In our view the interest of justice could be met in case the lis between the parties be decided on merits after providing fair opportunity of hearing to the assessee. Therefore, considering the above factual and legal position the Bench feels that the ends of justice would be met only if the matter is restored back to the file of the Ld.AO to decide the matter afresh and the rights of the revenue would not be prejudice. However in case proper and sufficient opportunity is not given to the assessee then in that eventuality the rights of the assessee shall be prejudice. However, for the lethargic and negligent action on the part of the assessee, a cost of Rs. 2000 is imposed on the assessee and the same shall be deposited in the Prime Minister's Relief Fund and copy of the same shall be submitted to the AO for proof and thus the appeal of the assessee is restored to the file of AO to decide it afresh by providing one more opportunity of hearing to the assessee. The assessee shall not seek any adjournment on frivolous grounds and remain cooperative during the course of proceedings and the appeal of the assessee is thus allowed for statistical purposes.

6. Before parting, we may make it clear that our decision to restore the matter back to the file of the AO shall in no way be construed as having any reflection or expression on the merits of the dispute, which shall be adjudicated by the AO independently in accordance with law.

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

Order pronounced in the open court on 13.11.2024.

Sd/-

(PADMAVATHY S)
ACCOUNTANT MEMBER

Sd/-

(SANDEEP GOSAIN)
JUDICIAL MEMBER

Mumbai, Dated 13/11/2024

KRK, PS

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

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

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

1.

उप/सहायक पंजीकार (Asst. Registrar)
आयकर अपीलीय अधिकरण, मुम्बई / ITAT, Mumbai