

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH “G”, MUMBAI
BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER
ITA No. 3681/M/2024
Assessment Year: 2014-15**

Sainath Sakharam Tara Survey No. 84-10/11, Kalyan Padgha Road, Sape Village, Bhiwandi, Dist. Thane – 421302. PAN: AERPT8712M	Vs.	Assistant Commissioner of Income Tax, Central Circle – 2, Thane Ashar IT Park, 6 th Floor, Road No. 16z, Wagle Industrial Estate, Thane – 400604.
(Appellant)		(Respondent)

Present for :

Assessee by : Shri Gaurav Kabra

Revenue by : Shri Dr. Kishor Dhule, CIT D.R.& Smt. Sujatha
P. Iyengar – Sr. AR.

Date of Hearing : 05.09.2024

Date of Pronouncement : 02.12.2024

ORDER

Per : Ratnesh Nandan Sahay, Accountant Member:

1. This appeal has been filed by the appellant against the Order of the Ld. CIT (Appeals) passed u/s. 250 of the Income Tax Act [the ‘Act’ in short] vide DIN & Order No. ITBA/APL/S/250/2024-25/1065032178(1) Dated 21/05/2024 for the Assessment Year 2014-15.



2. Following grounds of appeal have been raised by the appellant:

1. *“On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in passing the ex-parte order without granting sufficient opportunity of being heard to the appellant.*
2. *On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in confirming the action of the Learned Assessing Officer in passing the Assessment Order u/s.143(3) r.w.s. 153C of the Income Tax Act, 1961, which is bad in law and null and void as the same is passed in violation of the provisions of the Income Tax Act, 1961.*
3. *On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in confirming the action of the Learned Assessing Officer in making an addition of Rs 23,13,000/- on account of alleged undisclosed commission income, without considering the facts and circumstances of the case.”*

3. The facts of the case, in brief, are that the search and seizure action u/s.

132 of the Income Tax Act was conducted in Antariksh Group on 14/02/2019 who is engaged in the construction of residential houses, warehousing and commercial retail development since many years. The assessee is providing contractual services to the Antariksh group. During the search operations various documents pertaining to the assessee were found and seized. Since these documents had a bearing on the income of the assessee, hence, the satisfaction was recorded by the Ld. AO to assess his income under section 153A r.w.s. 153C of the Act.

4. During the assessment proceedings, Ld. AO asked the assessee to explain as to how the cash amounting to Rs.2,26,27,009/- received by the assessee as a contractual receipt was accounted for in the books of account? In response to that, the assessee admitted that it had received



cash from Antariksha group, however, some of the entries were recorded in the books of accounts and some of the receipts pertains to third party and offered income @ 5% of the gross receipts. The Ld. AO, however, did not accept the contentions of the assessee and assessed its income u/s. 153C r.w.s. 143(3) of the Act on a total income of Rs.25,56,410/- .The Ld. AO also initiated penalty proceedings u/s. 271 DA of the Income Tax Act for contravening the provisions of section 269 ST of the Income Tax Act.

5. During the penalty proceedings u/s. 271 DA of the Act, the assessee retracted from his earlier statement and stated that the assessee had received contract receipts in cash amounting to Rs.3,26,27,009/- only. The AO, therefore, imposed a penalty of Rs.3,26,27,009/- u/s. 271 DA of the Act for contravention of provision of section 269 ST of the Act on the ground that the assessee failed to bring fresh evidence during the penalty proceedings.
6. Aggrieved by the order of the AO, the assessee preferred appeal before the Ld. CIT(A). The Ld. CIT(A) has noted in the impugned order that various opportunities were given to the assessee to explain its case before him, however, no response was received from the assessee side. The Ld. CIT(A), therefore, dismissed the appeal of the assessee on the ground



that the assessee has failed to provide any details in support of its grounds of appeal raised before him.

7. Aggrieved by the order of the Ld. CIT(A), this appeal has been preferred before us. During the appellate proceedings before us, the appellant submitted that reasonable opportunity of being heard was not given to the appellant to explain its case and the Ld. CIT(A) has decided the appeal ex-parte.
8. We have considered the facts and circumstances of the case and the impugned order and it is found that though, the appellant didn't explain its case before the Ld. CIT(A) due to various reasons as stated by the appellant, the fact remained that the assessee was not heard before passing the impugned order. We, therefore, think it proper to remand the matter back to the file of the Ld. CIT(A) to consider the submissions made by the appellant after affording him the reasonable opportunity of being heard. The appellant is also directed to appear before the Ld. CIT(A) and provide all necessary details in support of its claim that there is no contravention of the provisions of section 269 ST of the Act.
9. In the result, the appeal is allowed for statistical purpose.

Order pronounced in the open court on 02.12.2024



Sd/-
NARENDER KUMAR CHOUDHRY
JUDICIAL MEMBER

Sd/-
RATNESH NANDAN SAHAY
ACCOUNTANT MEMBER

Mumbai, Dated: 02.12.2024.

Snehal C. Ayare, Stenographer

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

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.