

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

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER  
AND SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER**

**ITA No.2334/Mum/2024  
Assessment Year: 2014-15**

Dilipkumar Phoolchand Jain  A-801, Vardhman Height, T B Kadam Marg, Buculla (E), Mumbai-400027.  <b>PAN: AARPJ 1996 K</b>  (Appellant)	Vs.	ACIT-20(1), Mumbai          (Respondent)
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**Present for:**

Assessee by : Shri Dipesh Ruparelia  
Revenue by : Shri R.R. Makwana, Sr. DR

Date of Hearing : 29.10.2024  
Date of Pronouncement : 12.12.2024

**ORDER**

**PER AMARJIT SINGH, ACCOUNTANT MEMBER:**

This appeal of the assessee for the assessment year 2014-15 is directed against the order dated 04.03.2024 passed by the Id. Commissioner of Income-tax (Appeal), NFAC, Delhi. The assessee has raised the following grounds of appeal:

*"On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) has:*

- 1. Erred in adding an amount of INR 82,69,500 to the total income of the Appellant;*
- 2. Erred in not considering the grounds and arguments made by the Appellant while passing the impugned order;*
- 3. Erred in not granting an opportunity of being heard to the Appellant by passing an ex-parte order;*
- 4. Erred in adding INR 69,79,500 (being the difference between the actual sale value and the AIR sale value) to the total income of the*

*appellant without appreciating that it could be a possibility that the value has been incorrectly reported in the AIR;*

*5. Erred in disregarding the fact that the sale of godown is not reflecting in Form 26AS of the appellant as the sale value is below INR 50 lakhs and hence the buyer has not withheld taxes under Section 194-IA of the Act;*

*6. Erred in computing the revised working of profit by considering gross profit of INR 84,79,027 (which comprises of INR 69,79,500 and profit on sale of godown of INR 14,99,527) and separately adding interest income of INR 12,90,000 without appreciating the fact that the profit on sale of godown of INR 14,99,527 already included the interest income of 12,90,000;*

*7. Erred in making a double addition of interest income of INR 12,90,000/- by considering it in the profit on sale of godown of INR 14,99,527 and also separately adding the same in the revised working of profit;*

*8. Erred in disregarding the well-settled principle that addition made solely on the grounds of AIR is not sustainable in the eyes of the law;*

*9. Erred in adding the amount of INR 69,79,500 disregarding that the onus of proving that the same is actually unaccounted income of the Appellant lies with the department (and not with the Appellant);*

*10. Without prejudice to the above, erred in not appreciating the fact that only the profit margin on the alleged unaccounted sales, if any, can be added to the total income of the Appellant (and not the entire amount of alleged unaccounted sales);*

*11. Erred in levying interest under Section 234A, Section 234B and Section 234C of the Act;*

*12. Erred in Initiating penalty proceedings under Section 271F of the Act; and*

*13. Erred in Initiating penalty proceedings under Section 274 read with Section 271(1)(c) of the Act.”*

2. Fact in brief is that return of income declaring total income of Rs. 5,05,160/- was filed on 28.11.2014. The case was subject to scrutiny assessment u/s 143(3) of the Act. The assessee is a builder and developer of property and also a partner in the various partnership firm. During the course of assessment, on verification

of the project sale and revenue, the assessing officer observed that assessee had shown sale of godown to amount of Rs. 27 lacs. However, as per the AIR information sale of godown registered with Sub-registrar, Godown was to the tune of Rs. 96,79,500/-. Therefore, the difference of Rs. 69,79,500/- not requested in the P&L A/c was added to the total income of the assessee as un-reported sale.

3. The assessee filed appeal before the ld. CIT(A). The ld. CIT(A) has issued various notices of hearing however the assessee has not made any compliance before the ld. CIT(A). Therefore, the appeal of the assessee was dismissed.

4. Heard both the sides and perused the material on record. Without reiterating the fact as discussed above neither the assessee has made any compliance before the ld. CIT(A) nor the ld. CIT(A) had adjudicated the appeal filed by the assessee on merit as contemplate u/s 250(6) of the Act. The ld. CIT(A) has dismissed the appeal of the assessee for not filing the appeal in time and also not making compliance during the course of appellate proceedings. Before us, the ld. Counsel submitted that sale of godown was not reflected in Form 26As of the assessee as the sale value was below Rs. 50 lacs. Further, the ld. Counsel submitted that it was categorically brought to the notice of the assessing officer at the time of assessment proceedings vide letter dated 26.12.2016 that they were not able to trace the transaction as the record were not readily available.

5. The assessee has filed paper book comprising various document which were not filed before the lower authorities on the ground that the same were not readily available. Looking to the above facts and circumstances, we consider it appropriate to restore the case to the file of the assessing officer for deciding on merit. Needless to say that assessee is at liberty to file the relevant document and written submission before the assessing officer during the set aside assessment proceedings. Accordingly, the appeal of the assessee is allowed for statistical purposes.

6. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 12.12.2024.

**Sd/-**  
**(SUNIL KUMAR SINGH)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(AMARJIT SINGH)**  
**ACCOUNTANT MEMBER**

Mumbai, Dated: 12.12.2024  
Biswajit, Sr. P.S.

Copy to:

1. The Appellant:
2. The Respondent:
3. The CIT,
4. The DR

//True Copy//

By Order

Assistant Registrar  
ITAT, Mumbai Benches, Mumbai