

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"SMC" BENCH MUMBAI**

**BEFORE HON'BLE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER**

**ITA No. 1296/Mum/2024  
(Assessment Year: 2010-11)**

Bhavana Pratikkumar Bhatt, 44/3 <sup>rd</sup> Floor, Jariwala Bldg Arther Road, Tradeo Mumbai – 400034.	Vs.	ITO – 19(1)(2) Matru Mandir, Grant Road (W) Mumbai
PAN/GIR No. ACGPB2365M		
(Applicant)		(Respondent)

Assessee by	Shri Priyavrat Gupta
Revenue by	Shri vithal Machindra Bhosale, Sr. DR

Date of Hearing	16.12.2024
Date of Pronouncement	19.12.2024

आदेश / ORDER

**PER SANDEEP GOSAIN, JM:**

The present appeal has been filed by the assessee challenging the impugned order 28.12.2023, passed u/s 250 of the Income Tax Act, 1961 ('the Act'), by the learned Commissioner of Income Tax (Appeals) – 41, Mumbai / National Faceless Appeal Centre, Delhi ('Ld. CIT(A)'), for the assessment year 2010-11.

2. At the time of hearing, the Ld.AR of the assessee submitted that there is a delay in filing the appeal before the Hon'ble Tribunal and the assessee has filed the affidavit for

condonation of delay. After hearing both the parties on the application for seeking condonation of delay and also keeping view the fact that the husband of the assessee was not keeping well and required 24 hours attention for medication as he was suffering from Hyperacute Infarct in the left Thalamic region of the brain. The facts mentioned in the affidavit are reasonable and the Ld. DR has no specific objections. Accordingly, we condone the delay and admit the appeal for adjudicating on merits. The assessee has raised following grounds of appeal:

- 1. That on the facts and circumstances of the case, the order passed by the Commissioner of Income Tax (Appeals) (hereinafter as "CIT(A)") u/s 250 of the Income Tax Act, 1961 (hereinafter as "the Act") dated 28.12.2023 are bad in law.*
- 2. That on the facts and circumstances of the case, the learned CIT(A) erred in confirming the addition of Rs. 44,41,500 as undisclosed income is arbitrary and without application of mind*
- 3. That on the facts and circumstances of the case, the learned CIT(A) erred in appreciating that appellant entity used for accommodation business for commission income and not as beneficiary. The entire amount credited in bank account could not added only commission income at reasonable rate i.e 0.10% to 0.15% can be added.*
- 4. That the addition made is illegal, unjust and bad in law and based on mere surmises and conjunctures and the same cannot be justified by any material on record and the same are arbitrary and highly excessive.*
- 5. The Appellant craves leave to add alter amend and or vary any of the above grounds of appeal relief claimed at any time before the decision of the appeal.*

3. As per the facts of the present case, since the assessee could not appear before the AO during the assessment proceedings, therefore *ex-parte* assessment was framed u/s 144 r.w.s 147 of the Act, thereby making additions of Rs. 44,41,500/-.

4. During the appellate proceedings before the Ld. CIT(A), it was held that in order to support its grounds, the assessee simply filed the written submissions without filing any supporting documents, such as bills, contra ledger, confirmation of parties, bank statements, stocks statements, working of closing stock valuation, sales bills etc.

Whereas assessee contended that he had received commission income on the transactions, but no proof of commission received by the assessee has been filed before the revenue authorities. Whereas, on the contrary Ld. AR drawn our attention to the statement of facts filed before us, wherein it was pleaded by the Ld. AR that CIT(A) had passed order thereby confirming the additions only on the basis of information received from DGIT(Inv), Mumbai and has not applied his mind or gone through the bank summery that only Rs. 8,14,500/- was received by the assessee during the year under consideration in assessee's bank account. Although the details of which are fully mentioned in the order of assessment at page 2 & 3. But Bank summary /

statement reflects that only sum of Rs. 8,14,500/- was received by the assessee as a commission.

5. Be that as it may, after having gone through the orders passed by the revenue authorities, I noticed that this aspect was not considered by the Ld. CIT(A) and since the document referred to by assessee i.e bank statement needs verification at the end of Ld.AO. Therefore, Ld.DR has also no objection in case the matter is restore back to the file of AO. 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 A.O to decide the matter afresh. Thus the appeal of the assessee is restored to the file of A.O to decide it afresh by providing one more opportunity of hearing to both the parties. However, 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, I make it clear that my 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 19.12.2024.

Sd/-  
**(SANDEEP GOSAIN)**  
**JUDICIAL MEMBER**

Mumbai, Dated 19/12/2024

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.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

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