

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI "A" BENCH : MUMBAI

BEFORE MS. BEENA PILLAI, JUDICIAL MEMBER
AND
SHRI OMKARESHWAR CHIDARA, ACCOUNTANT MEMBER

ITA No. 2959/Mum/2024
Assessment Year 2018-19

Ashok Ghelabhai Patel, 17/18, Om Lxami Shopping Centre, Tulinj Road, Nallasopara (East), Palghar, Maharashtra PAN : AJKPP5490N	vs.	Income Tax Officer, NFAC, Delhi.
(Appellant)		(Respondent)

SA No. 69/Mum/2024
(Arising out of ITA No. 2959/Mum/2024)
Assessment Year 2018-19

Ashok Ghelabhai Patel, 17/18, Om Lxami Shopping Centre, Tulinj Road, Nallasopara (East), Palghar, Maharashtra PAN : AJKPP5490N	vs.	Income Tax Officer, NFAC, Delhi.
(Applicant)		(Respondent)

Assessee by : **Shri Lalit Munoyat**
Revenue by : **Shri Ram Krishn Kedia**
(SR.DR)

Date of Hearing : **03/10/2024**
Date of Pronouncement : **09/10/2024**

ORDER**PER BEENA PILLAI, J.M. :**

The assessee filed this appeal against order dated 27/03/2024 passed by the Ld.CIT(A)-NFAC, Delhi [hereinafter referred to as 'Ld.CIT(A)'] for the Assessment Year 2018-19. The assessee has also filed Stay Application, seeking stay of outstanding demand of Rs.94,54,898/-.

2. Brief facts of the case are as under:

The assessee is an individual and filed his return of income for the year under consideration on 12/10/2018, admitting total income of Rs.9,14,570/-. The case of the assessee was selected for complete scrutiny to verify "low income compared to large commission receipts". The Ld.AO issued notices u/s. 143(2) and 142(1) of the Act.

2.1. During the course of assessment proceedings, the Ld.AO called for evidences of large commission of Rs. 1,85,43,071/-, and salary of Rs.10,08,000/- debited to P&L A/c. The assessee failed to furnish any evidences regarding these expenditures. The Ld.AO noted that sum of Rs.2,100/- was debited as GST Penalty also, was also not explained by the assessee. The Ld.AO disallowed all the three expenses passed the assessment order u/s.143(3) r.w.s. 144B of the Act on 10/06/2021, assessing the total income at Rs. 2,04,64,741/-

Aggrieved by the additions, the assessee preferred appeal before the Ld.CIT(A).

2.2. During the course of appellate proceedings assessee could not submit details/evidences in support of his claim. The Ld.CIT(A) noted the written submissions regarding the applicability of Section 40a(ia) the Act. The commission expenditure salary expenditure of Rs. 10,08,000/- and disallowance of GST penalty of Rs. 2,100/- claimed by the assessee was disallowed u/s.37 of the Act, since the assessee failed to furnish any evidence in support. The Ld.CIT(A) confirmed the additions so made by the Ld.AO and dismissed the appeal of the assessee.

Aggrieved by the said order of the Ld.CIT(A), the assessee is in appeal before the *Tribunal*.

3. The Ld.AR submitted that the Ld.AO erred by finalizing the assessment without issuing a draft assessment order, which is a mandatory requirement u/s. 144B of the Act. It was also submitted that the Ld.CIT(A) erred in disallowing the expenses of Rs. 10,08,000/- towards salary and Rs. 1,85,43,071/- towards commission, u/s. 37(1) of the Act, without properly appreciating the evidence and submissions provided, which justified that they were incurred wholly and

exclusively for the purpose of assessee's business and the expenses were duly recorded in P&L A/c, supported by corresponding ledger entries.

3.1. By consolidating all the grounds, the Ld.AR submitted that, given an opportunity, the assessee will produce all such details before the authorities below diligently in support of his claim.

4. Per contra, the Ld.DR placed heavy reliance on the orders of the authorities below, and submitted that sufficient opportunity has already been given by the authorities, but the assessee failed to avail the same. Hence, he opposed the grant of further opportunity to the assessee.

We have heard the rival submissions and also gone through the record in the light of the submissions made on either side.

5. It could be seen from the orders of the authorities that the assessee failed to produce the details before the AO and the Ld.CIT(A), which resulted in passing the impugned order. It is a fact that the assessee does not stand to gain by not producing such documents. Having regard to the facts and circumstances of the case, we are of the considered opinion

that giving an opportunity to the assessee would meet the ends of justice.

5.1. With this view, we remand the issue to the file of the Ld.AO for fresh examination, after giving an opportunity of being heard to the assessee. We also direct the assessee to fully co-operate with the Ld.AO and produce the relevant material to dispose of the matter, without seeking any further adjournments.

Accordingly, the grounds raised by assessee are accordingly treated as allowed for statistical purposes.

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6. Since we restored the appeal of the assessee to the file of the Ld.AO for fresh examination, on merits, the Stay Application becomes infructuous and the same is accordingly dismissed.

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

Order pronounced in the open court on 09/10/2024

Sd/-
OMKARESHWAR CHIDARA
ACCOUNTANT MEMBER

sd/-
BEENA PILLAI
JUDICIAL MEMBER

Mumbai,
Dated: 09/10/2024
TNMM

ITA No. 2959/Mum/2024
S.A.No. 69/Mum/2024

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT concerned
- 4) The D.R, "A" Bench, Mumbai
- 5) Guard file

By Order

Dy./Asst. Registrar
I.T.A.T, Mumbai