

IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH,
MUMBAI

BEFORE SHRI OM PRAKASH KANT, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No. 648/Mum/2021

(निर्धारण वर्ष / Assessment Year: 2010-11)

Mayank Jayantilal Desai 20/20, Praveen Terrace, Dr. D.D Sathe Marg, Mumbai- 400004.	बनाम/ Vs.	CIT(A), NFAC Delhi-110503.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAAPD9253A		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	None
Revenue by:	Ms. Bhoomika Patel

सुनवाई की तारीख / Date of Hearing: 01/12/2021

घोषणा की तारीख /Date of Pronouncement: 31/01/2022

आदेश / ORDER

PER AMARJIT SINGH, JM:

The assessee has filed the present appeal against the order dated 27.02.2021 passed by the Commissioner of Income Tax (Appeals)-NFAC, Delhi [hereinafter referred to as the “CIT(A)”] relevant to the A.Y. 2010-11.

2. The assessee has raised the following grounds: -

“ 1. NATURAL JUSTICE

1.1 It is submitted that, in the facts and the circumstances of the case, and in law, the appellate order so framed be held as bad and illegal, as:



(I) The same is framed in breach of the principles of natural justice;
and

(ii) The same is perverse, passed without application of mind to the facts on record.

1.2 Without prejudice to the generality to the above, in the facts and the circumstances of the case, and in law, the order is bad in law as:

(i) The same is passed without granting proper, sufficient and adequate opportunity of being heard to the Appellant; and

(ii) The order is passed much before the date given for submitting the response of the Appellant.

2. REASSESSMENT

2.1 The Learned Commissioner of Income - tax (Appeals), National Faceless Appeal Centre, Delhi, ["Ld. CIT (A)"], erred in confirming the action of the A.O. in initiating reassessment proceedings and framing the assessment of the Appellant by invoking the provisions of section 147 r.w.s. 148 of the Income tax Act, 1961 ["the Act"]

2.2 While doing so, the Ld. CIT (A) failed to appreciate that:

(i) The case of the appellant did not fall within the parameters laid down by section 147 r.w.s. 148 of the Act;

(ii) The necessary preconditions for initiating and completion thereof were not satisfied.



2.3 It is submitted that in the facts and the circumstances of the case, and in law, the reassessment framed is bad, illegal and void.

WITHOUT PREJUDICE TO THE ABOVE

3.1 The Id. CIT(A) erred in making addition of Rs.19,01,838/- being the alleged profit earned by the appellant out of purchases from the alleged grey market.

3.2 It is submitted that in the facts and the circumstances of the case, and in law, no such addition was called for.

3.3 Without prejudice to the above, in the alternative, assuming-but no admitting that some addition was called for the computation of the same is not in accordance with law, is arbitrary and excessive.

LIBERTY

4 The appellant craves leave to add, alter, delete or modify all or any the above ground at the time of hearing.”

3. The brief facts of the case are that the assessee filed its return of income on 14.10.2010 declaring total income to the tune of Rs. Nil. The return was processed u/s 143(1) of the Act. The case of the assessee was reopened u/s 147 of the Act by issuance of notice u/s 148 of the Act dated 18.03.2015 after recording the reasons. The assessee was engaged in the business of trading of Diamonds. The necessary notices u/s 143(2) & 142(2) of the Act were issued and served upon the assessee. The case of the assessee was reopened on the basis of the letter of DGIT(Inv.) in which it



was conveyed that the assessee had taken the bogus purchases entries of Rs.2,37,72,970/- from the following two parties as under.:-

Name of the Entry	Fin. Year	Amount
Aadi	2009-10	1,79,09,380
Sparsh	2009-10	58,63,590/-
Total		2,37,72,970/-

The AO raised the addition in sum of Rs.2,37,72,970/-. The total income of the assessee was assessed to the tune of Rs. Nil. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who dismissed the appeal of the assessee, therefore, the assessee has filed the present appeal.

4. We have heard the argument advanced by the Ld. Representative of the Department and has gone through the case carefully filed. The assessee did not appear before us. We find that Ld. CIT(A) has dismissed the appeal for non-prosecution. We find that it is incumbent upon the Ld. CIT(A) to pass an order on the merits of the case and not to dismiss the appeal for non-prosecution.

5. For this proposition we place reliance upon the following case laws.

(1) CIT Vs. Premkumar Arjundas Luthra (HUF) (2017) 154 DTR (Bom) 302

(2) CIT Vs. S Chenniappa Mudaliar (1969) 74 ITR 1 (SC)

6. Accordingly in the interest of justice we remit the issue raised in the appeal to the file of the Ld. CIT(A). Ld. CIT(A) is directed to consider the issue afresh and pass an order on the merits of the case after giving the assessee proper opportunity of being heard. Therefore, in the said



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circumstances, we are of the view that the order of the CIT(A) is not liable to be sustainable in the eyes of law, therefore, we set aside the finding of the CIT(A) on all the issues and restored the matter before the CIT(A) to decide the matter afresh by giving an opportunity of being heard to the assessee in accordance with law.

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

Order pronounced in the open court on 31/01/2022

Sd/-

(OM PRAKASH KANT)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 31/01/2022

Vijay Pal Singh, (Sr. PS)

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai