

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC-1" MUMBAI**

**BEFORE SHRI KULDIP SINGH (JUDICIAL MEMBER) AND
SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)**

**ITA No. 1750/MUM/2021
Assessment Year: 2017-18**

Rajabali Memabhai Momin,
A/601, Rohan Nishant CHS,
Shanti Park, Mira Road,
Thane-401 107.

Vs. ITO-2(4),
Ashar IT Park, 6th floor,
Road No. 16Z,
Wagle Industrial Estate,
Thane West-400604.

**PAN No. ATQPM 6904 Q
Appellant**

Respondent

Assessee by : Mr. Sameer Dalal, AR
Revenue by : Mr. Kiran P. Unavekar, DR

Date of Hearing : 31/05/2022
Date of pronouncement : 31/05/2022

ORDER

PER OM PRAKASH KANT, AM

This appeal has been preferred by assessee against the order dated 30.07.2021 passed by the Ld. Commissioner of Income-Tax (Appeals)-National Faceless Appeal Centre (NFAC), Delhi [in short 'the Ld. CIT(A)'] for assessment year 2017-18, raising following grounds:

1. *NOT GIVING PROPER OPPORTUNITY:*

The Commissioner of Income Tax (Appeals) National Faceless Appeal Centre [Ld. the CIT (A)] erred in passing ex - parte order under section 250 of the Income tax Act, 1961 (the Act) without giving sufficient, proper and adequate opportunity of being heard to the Appellant while passing the order.

1.2 The CIT (A) failed to appreciate / consider that the Appellant in response to notice dated: 26th July 2021 issued by the CIT (A), DIN: TBA/NFAC/F/APL 1/2021-22/1034421241(1) to submit details before 29th July 2021, Appellant uploaded detailed submissions on 29th July 2021 along with supporting evidences vide acknowledgment No.: 209488351290721 and 209510291290721.

1.3 It is submitted that in the facts and the circumstances of the case, and in law, the order be held as bad and illegal, having framed in breach of the principles of natural justice.

WITHOUT PREJUDICE TO THE ABOVE:

2. *CASH DEPOSITS IN BANK LOAN ACCOUNTS OF Rs. 2,67,671/- u/s. 69 A OF THE ACT:*

2.1. The CIT (A) erred in confirming the action of the assessing officer ('the A.O.) whereby, the A.O. treated the cash deposited of Rs. 9,67,671/-, in the bank loan accounts as unexplained investment under section 69 A of the Act and taxing the same at sixty percent (60%) in terms of the provisions of Section 115BBE of the Act.

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

(i) the case of the Appellant did not come at all within the preview of section 69 A of the Act;

(ii) the source of cash deposited in the bank accounts was fully explained by the Appellant during the assessment proceedings along with the supporting evidences.

(iii) the entire demand is raised on the basis of estimated revenue and consequent cash that could be generated, contrary to the facts and circumstances of the case as explained and supported by evidences without any finding or evidences against your Appellant

(iv) Appellant had withdrawn cash from bank loan account for use in agricultural and dairy activity and deposited cash on hand from the operations back to Bank Loan Account upon Demonetization of SBN He was never the owner the cash deposited.

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

2.4 The Appellant prays that the addition of Rs. 9, 67, 671/- be deleted.

3. The appellant craves leave to refer to and rely upon all or any of the above grounds of appeal and add to, delete, modify and/or alter the grounds of appeal on or before the date of hearing.

2. At the outset, the Ld. counsel of the assessee submitted that the appeal has been decided by the Ld. CIT(A) *ex-parte* without

considering the submission of the assessee which were filed on the date of the hearing granted by the Ld. CIT(A). The Ld. counsel drawn our attention to para-4 the order of the Ld. CIT(A) and submitted that according to the Ld. CIT(A) hearing were fixed on 28.12.2020, 14.06.2021 and 23.07.2021. He submitted that actually the Ld. CIT(A) further adjourned the hearing to 26.07.2021 which is evident from the notice sent by him, which is placed on page 37 of the Paper Book. The Ld. counsel submitted that the assessee duly responded the said notice of the Ld. CIT(A) by way of filing submission on the Income-tax Portal of appellate proceedings. He referred to the said submission filed on page 42 and 42 of the Paper Book. The Ld. counsel submitted that the Ld. CIT(A) has not mentioned in the order the said notice for hearing dated 26.07.2021 and the reply submitted by the assessee and therefore the matter should be restored back to the Ld. CIT(A) for deciding afresh after considering the submission of the assessee.

3. The Ld. Departmental Representative (DR) could not controvert about factual aspect pointed out by the Ld. counsel of the assessee.

4. We have heard the rival submissions of the parties and perused the material on record. On perusal of the record, we find that though the Ld. CIT(A) has issued notice for hearing dated 26.07.2021 and assessee has uploaded the reply on same date on the e-proceedings of the appeal on the portal of the Income-tax Department. The Ld. CIT(A) has neither mentioned said date of hearing nor considered the reply of the assessee. In our opinion, the Ld. CIT(A) is required to follow the principle of natural justice and to decide the issue-in-dispute after considering the explanation of the assessee. In the interest of substantial justice, we feel it appropriate to restore this issue back to the file of the Ld. CIT(A) with the direction to pass a speaking order after taking into consideration explanation of the assessee on the issue-in-dispute and after providing adequate opportunity of being heard to the

assessee. The grounds raised by the assessee are accordingly allowed for statistical purposes.

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

Order pronounced in the open Court.

Sd/-

**(KULDIP SINGH)
JUDICIAL MEMBER**

Sd/-

**(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;

Dated: 31/05/2022

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Sr. Private Secretary)
ITAT, Mumbai