

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH “H”, MUMBAI**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**

**ITA No.94/M/2022
Assessment Year: 2015-16**

Mr. Kamal Jajoo, 405, Satyanarayan Bhawan, Worli, Mumbai – 400 018 PAN: AAAPJ7652F	Vs.	ACIT 21(2), Piramal Chambers, Mumbai - 400012
(Appellant)		(Respondent)

Present for:

Assessee by : Ms. Rupa Nanda, C.A.
Revenue by : Shri Tejinder Pal Singh, Sr. A.R.

Date of Hearing : 13 . 07 . 2022
Date of Pronouncement : 25 . 08 . 2022

O R D E R

Per : Kuldip Singh, Judicial Member:

The appellant, Mr. Kamal Jajoo (hereinafter referred to as ‘the assessee’) by filing the present appeal, sought to set aside the impugned order dated 18.11.2021 passed by the National Faceless Appeal Centre(NFAC) [Commissioner of Income Tax (Appeals), Delhi] (hereinafter referred to as CIT(A)] qua the assessment year 2015-16 on identical grounds inter alia that:

“1. The learned Commissioner of Income Tax (Appeals) erred in confirming the treating a sum of Rs.10,31,479/- as business income of the assessee as against short term capital gains as claimed in the return of income.

2. The AR of the assessee filed paper book No.I and II simultaneously on 16/10/2021 and filed a letter of the even date requesting adjournment for submitting written submissions. However the Ld. CIT Appeals did not consider the same and passed the appellate order without issuing show cause notice.

3. Your appellant submits that due relief be allowed.

4. The appellant company craves to add to, alter or amend the foregoing grounds, which are without prejudice to one another, at the time of hearing,”

2. Briefly stated facts necessary for adjudication of the controversy at hand are: the assessee is into the business of trading and manufacturing of textile garments and material having income from business and profession, and income from other sources. Assessing Officer (AO) during the scrutiny proceedings made an addition of Rs.10,31,479/- on account of short term capital gain declared by the assessee in the return of income by treating the same as business income. AO also made addition of Rs.32,000/- being dividend stripping under section 94(7) of the Act and thereby framed the assessment at the total income of Rs.22,03,350/- and agricultural income at Rs.3,87,460/- under section 143(3) of the Income Tax Act, 1961 (for short 'the Act').

3. Assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has upheld the addition made by the AO by dismissing the appeal. Feeling aggrieved with the impugned order the assessee has come up before the Tribunal by way of filing present appeal.

4. We have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light

of the facts and circumstances of the case and law applicable thereto.

5. At the very outset, it is brought to the notice of the Bench by the Ld. A.R. for the assessee that no opportunity of being heard has been given to the assessee before deciding the appeal nor any notice has been served upon him nor the order passed by the Ld. CIT(A) is on merits.

6. We have perused the order passed by the Ld. CIT(A) who has mentioned in para 4 of the impugned order that three notices were issued to the assessee but no compliance was there. But it is nowhere recorded by the Ld. CIT(A) that if the aforesaid three notices issued to the assessee were ever served upon him. Mere issuance of the notice is not sufficient to treat the effective service of the assessee. To decide the issue once for all and to curtail the multiplicity of the proceedings we are of the considered view that adequate opportunity is required to be given to the assessee. So this case is remitted back to the Ld. CIT(A) to decide afresh after providing opportunity of being heard to the assessee. Consequently, present appeal filed by the assessee is hereby allowed for statistical purposes.

Order pronounced in the open court on 25.08.2022.

**Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER**

**Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

Mumbai, Dated: 25.08.2022.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.