

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

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA Nos.504 & 505/M/2022  
Assessment Years: 2016-17 & 2017-18**

Shri Chandrakant N. Dedhia, 501-6 New Anant Bhuvan, Narshi Natha Street Bhat Bazar, Mumbai – 400 009 <b>PAN: AABPD2996F</b>	Vs.	CIT(A)-28, NFAC, Mumbai
(Appellant)		(Respondent)

**Present for:**

Assessee by : None  
Revenue by : Shri Anil Gupta, D.R.

Date of Hearing : 27. 09 . 2022  
Date of Pronouncement : 29. 09 . 2022

**O R D E R**

**Per : Kuldip Singh, Judicial Member:**

Since common questions of facts and law have been raised in both the inter-connected appeals, the same are being disposed of by way of composite order to avoid repetition of discussion.

2. The appellant, Shri Chandrakant N. Dedhia (hereinafter referred to as ‘the assessee’) by filing the present appeals, sought to set aside the impugned orders dated 30.08.2021 & 27.08.2021 passed by the National Faceless Appeal Centre (NFAC) [Commissioner of Income Tax (Appeals), Delhi] (hereinafter referred to as CIT(A)) qua the assessment years 2016-17 &

2017-18 respectively on identically worded grounds except the difference in figures grounds inter alia that:-

*“The learned CIT(A) has erred in confirming the addition of undisclosed cash amounting to Rs.5,00,000/- & Rs.3,00,000/- u/s 68 of the Income Tax Act, 1961 for A.Y. 2016-17 & 2017-18 respectively.”*

3. Briefly stated facts necessary for adjudication of the controversy at hand are : assessee's return of income at Rs.3,95,890/- was processed under section 143(1) of the Income Tax Act, 1961 (for short 'the Act'). Thereafter, on the basis of information received from Dy. Commissioner of Income Tax, Central Circle, Mumbai qua a search and seizure operation carried out in case of Pandhe Group, it was noticed from the seized material that Rs.3,89,79,000/- has been received by Pandhe Group in cash for purchase of land near a town named Shelu, Karjat, Maharashtra during 18.06.2010 to 12.04.2016 stated to be corroborated with statement of Shri Mayuresh Jadhav, employee of Pandhe Group and Shri Ankur Anil Pandhe dated 26.10.2016 and 29.10.2016 respectively. From the information source, it is noticed that a sum of Rs.5,00,000/- & Rs.3,00,000/- has been received by the assessee in A.Y. 2016-17 & 2017-18 respectively. After recording reasons notice under section 148 of the Act was issued in response to which the assessee has filed return of income. Then notice under section 143(2) and 142(1) were issued and served upon the assessee. Declining the contentions raised by the assessee the Assessing Officer (AO) proceeded to made an addition of Rs.5,00,000/- and Rs.3,00,000/- to the total income of the assessee under section 68 of the Act for A.Y. 2016-17 & 2017-18 respectively and thereby framed the assessment under section 143(3) read with section 147 of the Act.

4. Assessee carried the matter before the Ld. CIT(A) by way of filing appeals who has upheld the addition by dismissing the appeals. Feeling aggrieved the assessee has come up before the Tribunal by way of filing present appeals.

5. Present appeals were instituted by the assessee on 18.05.2022 and since then 4 notices through registered post with acknowledgement due (RPAD) were issued for service of the assessee which were reportedly not received back served or unserved. Since a period of more than one month has already elapsed notices sent through RPAD are presumed to have been served upon the assessee, but the assessee has not preferred to put in appearance in order to prosecute his appeals. So the Bench has decided to dispose of these appeals on the basis of material available on record with the assistance of the Ld. D.R. for the Revenue.

6. I have heard the Ld. Departmental Representative for the Revenue, 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 case law relied upon.

7. The assessee has primarily challenged the impugned orders passed by the AO as well as the Ld. CIT(A) on the ground that no adequate opportunity of being heard has been given to the assessee by the AO nor the assessee has been given an opportunity to cross examine a third party whose evidence has been relied upon to frame the assessment and relied upon the decisions rendered by Hon'ble Supreme Court in case of Kishinchand Chellaram vs. CIT (1980) 4 Taxman 29 (SC), Andaman Timber Industries vs. CCE (2015) 62 Taxmann.com 3/52 GST 355 (SC) and the decision rendered by

Hon'ble Calcutta High Court in case of CIT vs. Panna Devi Saraogi (1970) 78 ITR 728 (Cal.) and the decision rendered by the Hon'ble Madras High Court in case of Smt. Ritu Devi vs. CIT (2004) 141 Taxman 559 (Mad.), in the statement of facts brought on record as annexure B.

8. When I examine the assessment order passed by the AO particularly table given in para 5.3 & 5.4 of A.Y. 2016-17 & 2017-18 respectively all the alleged entries contained qua the seized materials are pertaining to earlier Assessment Years 2012-13 & 2014-15. In para 5.5 the AO has also mentioned that assessee has failed to discharge the primary onus cast upon him to disprove the cash received by him. In para 5.3 it is also mentioned that assessee has intentionally not filed complete details rather he has filed part submissions vide letter dated 18.11.2019.

9. On the basis of aforesaid facts when I further examine the impugned orders passed by the Ld. CIT(A) the assessee has vehemently pleaded for providing opportunity of being heard to the assessee by raising a single ground that "additions have been made without giving sufficient opportunity of being heard to the assessee." The Ld. CIT(A) has merely brushed aside this contention of the assessee by recording that adequate opportunity from time to time during assessment proceedings have been given to the assessee but he has not availed of the same.

10. I am of the considered view that opportunity of being heard should not only be a paper opportunity but should be a real and effective opportunity so that dispute can be decided once for all to curtail the multiplicity of the litigation. The assessee has also not been given any opportunity to cross examine third party whose

statement and evidence has been relied upon to make additions in question.

11. So perusal of the assessment orders and impugned orders passed by the Ld. CIT(A) goes to prove that adequate opportunity of being heard has not been given to the assessee nor the assessee has been provided with an opportunity to cross examine third party which make the impugned orders passed by the AO as well as the Ld. CIT(A) not sustainable in the eyes of law. Because it is a cardinal principle of natural justice that effective adequate opportunity of being heard should be given before passing any order against the assessee. To meet with the ends of justice, I am of the considered view that the aforesaid appeals are required to be remitted back to the AO to decide afresh after providing opportunity of being heard to the assessee. Consequently, both the appeals filed by the assessee are allowed for statistical purposes.

**Order pronounced in the open court on 29.09.2022.**

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

Mumbai, Dated: 29.09.2022.

\* 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.