

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

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.654/M/2022  
Assessment Year: 2009-10**

Dr. Makrand Ratubhai Masrani, Flat No.701, Matru Ashish Building, Lalubhai Park Road, Andheri (West), Mumbai – 400 058 <b>PAN: AAEPM5955C</b>	Vs.	Income Tax Officer 16(3)(1), Aayakar Bhavan, R.No.444, M.K. Road, Mumbai – 400 020
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Dalpat Shah, A.R.  
Revenue by : Shri Azhar Zain Vayal Parambath, D.R.

Date of Hearing : 15 . 09 . 2022  
Date of Pronouncement : 29 . 09 . 2022

**O R D E R**

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

The appellant, Shri Makrand Ratubhai Masrani (hereinafter referred to as ‘the assessee’) by filing the present appeal, sought to set aside the impugned order dated 29.03.2022 passed by the National Faceless Appeal Centre(NFAC) [Commissioner of Income Tax (Appeals), Delhi] (hereinafter referred to as CIT(A)) qua the assessment year 2009-10 on the grounds inter alia that :-

*“1. Confirming the abrupt additions made by the ITO.*

*2. It is prayed that the impugned order passed by the CIT(NFAC) may please be set aside and the order passed by Hon’ble CIT(A)-7 dated 6/12/2017 be restored.”*

2. Briefly stated facts necessary for adjudication of the controversy at hand are : assessee is a doctor by profession who has filed return of income for the year under consideration at the total income of Rs.11,02,708/-, again filed revised return on 06.03.2010 declaring total income at Rs.3,00,791/-. After recording reasons notice was issued and served upon the assessee under section 148 of the Income Tax Act, 1961 (for short 'the Act'). Further, notices under section 143(2) and 142(1) of the Act were issued and served upon the assessee. On the basis of information received from DCIT, Central Circle-4, Surat vide letter dated 21.01.2016 Assessing Officer (AO) noticed that during the course of assessment a search and seizure action carried out on 03.10.2013 in case of Rajendra Jain Group, Sanjay Choudhary Group, Dharmichand Group and it was noticed that assessee was one of the beneficiaries of accommodation entries to the tune of Rs.3,38,750/- in the nature of bogus purchases from Sun Diam which is one of the concern controlled, managed and operated by Rajendra Jain Group. Declining the contentions raised by the assessee, the AO framed the assessment under section 143(3) read with section 147 of the Act vide order dated 15.12.2016 and assessed income of Rs.14,41,460/- by making an addition of Rs.3,38,750/- by treating the purchase of diamonds as claimed by the assessee as non genuine purchases.

3. Assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has initially partly allowed the appeal vide order dated 06.12.2017. Thereafter, assessee's appeal against the same assessment order dated 15.12.2016 was again taken up and disposed of by the Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi vide order dated 29.03.2022. Feeling aggrieved the

assessee has come up before the Tribunal by way of filing present appeal, specifically challenged the second order dated 29.03.2022 passed by NFAC, Delhi.

4. Assessee by filing the present appeal sought limited relief to set aside the impugned order dated 29.03.2022 passed by the Ld. CIT(A), NFAC and to restore the original order passed by Ld. CIT(A)-7 dated 06.12.2017.

5. From the facts brought on record by the assessee it is proved that assessee's appeal before the Ld. CIT(A) bearing No.CIT(A)-/IT-49/2016-17 was disposed of vide order dated 06.12.2017 available in file. However, for the reasons best known to the respondent/Revenue Authority assessee's appeal again taken up by Ld. CIT(A), NFAC against the assessment order dated 15.12.2016 and was disposed of by the order dated 29.03.2022, copy of order is available on record.

6. I am of the considered view that when assessee's appeal has already been decided by the Ld. CIT(A) vide order dated 06.12.2017 NFAC has no jurisdiction to entertain the same appeal on the same subject matter and as such impugned order is nullity. Moreover, assessee has brought on record notification S.O.3296(E) [NO.76/2020/F.NO.370142/33/2020-TPL] dated 25.09.2020 which came into operation with effect from 25.09.2020, which fact goes to prove that as on dated of 11.01.2017, the date of instituting the present appeal, before the NFAC, a faceless appeal scheme was not in existence and as such was rightly disposed of by the Commissioner (Appeals) vide order dated 06.12.2017 in appeal bearing No.CIT(A)-7/IT-49/2016-17. In view of the matter,

impugned order dated 29.03.2022 passed by the Ld. CIT(A), NFAC is quashed being nullity and the earlier order dated 06.13.2017 passed by Ld. CIT(A)-7 is restored. Resultantly, appeal filed by the assessee is allowed.

**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.