

**IN THE INCOME TAX APPELLATE TRIBUNAL
 "A" BENCH, MUMBAI**

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER &
 SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 2403/Mum/2022
 (A.Y.2013-14)**

Alibhai Vadasaria Zulficar, 104, Dayal Bhavan, Kesavji Naik Road, Chinch Bunder, Mumbai – 400009	Vs.	ACIT, Circle-17(1) Room No. 117, 1 st Floor, Aaykar Bhavan, M.K.Road, Mumbai - 400020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAAPZ0795P		
Appellant	..	Respondent

Appellant by :	Tanmay Phadke
Respondent by :	Mehul Jain

Date of Hearing	23.11.2022
Date of Pronouncement	06.12.2022

आदेश / O R D E R

Per Amarjit Singh (AM):

The present appeal filed by the assessee is directed against the order passed the NFAC, dated 03.08.2022 for A.Y. 2013-14. The assessee has raised the following grounds before us:

- “1. On the facts and circumstances of the case and in law, the National Faceless Appeal Centre/Commissioner of Income Tax (Appeals) "the learned Commissioner (Appeals)) erred in deciding the appeal ex parte in violation of the principle of natural justice. Thus, the order dated 03.08.2022 may be set aside and the matter may be restored back to the file of the learned Commissioner (Appeals).

2. *On the facts and circumstances of the case and in law, the order dated 03.08 2022 as passed by the learned Commissioner (Appeals) is bad in law since it dismisses the appeal on the reason of non prosecution and does not adjudicate on the grounds/additional grounds of appeal and the issues under consideration. The said order being in violation of the provisions of Section 250 and 251 of the Act and the decision of the Hon'ble jurisdictional Bombay High Court in "CIT vs. Premkumar Arjundas Luthra (HUF): [2016] 69 taxmann.com 407 (Bombay)" may be quashed.*
3. *On the facts and circumstances of the case and in law, the assessment order passed by the Respondent for the Assessment Year 2013-14 is without jurisdiction and untenable in law as the assessment was completed without issuance of the mandatory notice under Section 143(2) of the Act. The learned Commissioner (Appeals) failed to decide the jurisdictional issue and erred in confirming the assessment order. Thus, the order of the learned Commissioner (Appeals) may be quashed.*
4. *On the facts and circumstances of the case and in law, the assessment order passed by the Respondent for the Assessment Year 2013-14 is without jurisdiction and untenable in law as the Respondent had issued a notice under Section 147 of the Act and passed the assessment order in the absence of reason to believe that the income chargeable to tax has escaped assessment. The learned Commissioner (Appeals) failed to decide the said jurisdictional issue and erred in confirming the assessment order. Thus, the order of the learned Commissioner (Appeals) may be quashed.*
5. *On the facts and circumstances of the case and in law, the addition of Rs.2,50,000 as made by the Respondent on surmises and conjectures is bad in law and thus, the same may be deleted.*
6. *The Appellant craves leave to add, alter, rescind or amend any of the above grounds of appeal."*

2. The return of income declaring total income at Rs.74,48,370/- was filed on 19.10.2013. Subsequently, the case was reopened by issuing notice u/s 148 of the Act on the basis of information received from the DDIT (Investigation) regarding payment of on money by the assessee cosmos group to the amount of Rs.2,50,000/- for purchase of flat in cosmos lounge. On query the assessee explained that he has made payment by the cheque and the price of the flat declared by him was more than the ready reckner value. However, the A.O has not agreed with the submission of the assessee on the basis of the statement recorded

during the course of search in the case of cosmos group. Accordingly, amount of Rs.2,50,000/- was added to the total income of the assessee u/s 69 of the Act.

3. Assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee for want of prosecution, since the assessee has not made any compliance in response to the two notices issued by the CIT(A).

4. Heard both the parties and perused the material on record. The case of the assessee was reopened on the basis of information received from the DDIT (Investigation) that assessee has given an amount of Rs.2,50,000/- on money for a purchase of flat in cosmos lounge. However, the assessee contended that he has made payment by cheque and value of the flat was higher than the ready reckner value. The AO stated that assessee has not availed option to cross examined the person whose statement was recorded. Therefore, amount of Rs.2,50,000/- was added to the total income of the assessee u/s 69A as unexplained investment. However, the ld. CIT(A) has dismissed the appeal of the assessee for want of non compliance since assessee has not made compliance to the notices issued during the course of appellate proceedings. In this regard we have perused the provisions of Section 250(6) of the Act which contemplates that the ld. CIT(A) would determine point in dispute and record reason of such point in support of his conclusion. The ld. CIT(A) has not determined those points and not recorded detailed findings. Therefore, we restore this case to the file of ld. CIT(A) for adjudicating afresh on merit as contemplating in Sec. 250(6) of

the Act after affording opportunity to the assessee. Accordingly, appeal of the assessee is allowed for statistical purposes.

5. In the result, the appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 06.12.2022

Sd/-

(Rahul Chaudhary)
Judicial Member

Place: Mumbai

Date 06.12.2022

Rohit: PS

Sd/-

(Amarjit Singh)
Accountant 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 DR, ITAT,
Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

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