

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

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
AND
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No.2982/M/2022
Assessment Year: 2017-18**

Mr. Sejal Nirman Kothari, 2-CD Block, Maker Apartment, 232, Walkeshwar Road, Walkeshwar, Mumbai – 4000 006 PAN: AGMPK8840L	Vs.	Income Tax Officer, Ward 19(3)(3), Room No.202, 2 nd Floor, Matru Mandir, Tardeo Road, Mumbai – 400 007
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Dharan Gandhi, A.R.
Revenue by : Shri Saurabh Kumar Rai, D.R.

Date of Hearing : 11 . 01 . 2023

Date of Pronouncement : 19 . 01 . 2023

O R D E R

Per : Kuldip Singh, Judicial Member:

The appellant, Mr. Sejal Nirman Kothari (hereinafter referred to as ‘the assessee’) by filing the present appeal, sought to set aside the impugned order dated 12.11.2022 passed by the National Faceless Appeal Centre(NFAC) [Commissioner of Income Tax (Appeals), Delhi] (hereinafter referred to as CIT(A)] qua the assessment year 2017-18 on the grounds inter-alia that :-

“1. The Ld. Commissioner of Income-tax (Appeal), NFAC, erred in upholding the action of Ld. Assessing Officer in adding INR 20,00,000/- being cash deposit in the bank account and taxing the same u/s 115BBE of the Act at the rate of 60%.

2. *The Ld. Commissioner of Income-tax (Appeal), NFAC, erred in passing an ex-parte order without considering the adjournment request filed by the assessee.*
3. *The Ld. Commissioner of Income-tax (Appeal), NFAC, erred in not granting sufficient opportunity of being heard and thereby violating principles of natural justice.*
4. *The Ld. Commissioner of Income-tax (Appeal), NFAC, erred in not disposing the appeal on merits of the case.*
5. *The assessment order passed u/s 143(3) of the Act dated 23.12.2019 is bad in law.*
6. *The assessment order passed u/s 143(3) of the Act dated 23.12.2019 is time barred.*
7. *The Ld. AO erred in charging interest u/s 234B & 234C of the Act.*
8. *The grounds of appeal raised are independent and without prejudice to each other.*
9. *The Appellant craves leave to add, to amend, alter/delete and/or modify the above grounds of appeal on or before the final hearing.”*

2. Briefly stated facts necessary for consideration and adjudication of the issues at hand are : assessee's return of income filed for the year under consideration was subjected to scrutiny. Assessing Officer (AO) noticed that the assessee has deposited cash amounting to Rs.20,00,000/- during the demonetisation period but failed to file any documentary evidence and details regarding the nature and source of such cash deposit and thereby made addition thereof on account of unexplained money under section 69A read with section 115BBE of the Income Tax Act, 1961 (for short 'the Act'.)

3. The assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has confirmed the addition. Feeling aggrieved with the impugned order passed by the Ld. CIT(A) 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. The Ld. CIT(A) dismissed the appeal filed by the assessee on account of non prosecution by returning following findings:

“4.7 I have perused the impugned assessment order u/s 143(3) dated 23.12.2019 The appellant has not furnished any submissions in support of the ground of appeal during the appellate proceedings apart from the statement of facts furnished along with Form 35. The appellant admits that she has received all the notices, letters and orders issued by the assessing officer online. All notices were issued electronically since the assessment was being done on the ITBA Portal and Faceless Assessment had started. It is quite a brazen attempt to not comply with any of the notices issued by the assessing officer and then to claim that none of the letters or notices issued prior to completion of assessment order were not received. During appeal proceedings too, appellant despite receiving several notices which gave her sufficient opportunity of being heard, did not avail any of the opportunities of being heard. Thus, there is a consistent attitude of non-compliance and adopting dilatory tactics by the appellant during assessment proceedings as well as appeal proceedings. Taking into account the entire conspectus of this case, I see no reason to interfere with the findings of the assessing officer in assessment order u/s 143(3). Therefore, the assessment order us 143(3) made by assessing officer is sustained on the reasons given in the assessment order Accordingly, all grounds of appeal are dismissed.”

6. Undisputedly assessment order passed by the AO as well as impugned order passed by the Ld. CIT(A) have been passed ex-parte due to non appearance of the assessee.

7. Bare perusal of para 4.6 of the Ld. CIT(A) goes to prove that numerous notices were given to the assessee but she failed to

appear before the Ld. CIT(A) to explain the huge cash deposit of Rs.20,00,000/- in the banks. No doubt when numerous notices were given to the assessee she was required to appear before the AO.

8. The Ld. AR for the assessee submitted that the assessee has not received any notice. Even if the assessee is assumed to have been served the Ld. CIT(A) was required to dispose of the appeal on merits but he has merely dismissed the appeal for want of non appearance of the assessee. Now the Ld. A.R. for the assessee given undertaking that she will appear before the Revenue Authorities on each and every date of hearing in order to explain the cash deposit in her bank account. To impart the justice and to decide the issue once for all and in order to comply with the principle of natural justice adequate opportunity of being heard is required to be given to the assessee. So impugned order passed by the Ld. CIT(A) is hereby set aside and since the facts are required to be thrashed/verified by the AO first, the case is remitted back to the AO to decide afresh after providing opportunity of being heard to the assessee.

9. Resultantly, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 19.01.2023.

**Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER**

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

Mumbai, Dated: 19.01.2023.

* 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.