

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH  
MUMBAI**

**BEFORE: SHRI M.BALAGANESH, ACCOUNTANT MEMBER  
&  
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA No.4550/Mum/2017  
(Assessment Year :2010-11)**

|   |     |   |
|---|-----|---|
| Shri Parshuram Jagtap<br>G-304, Kamal Park CHS Ltd<br>Near Mangatram Petrol<br>Pump, Bhandup (W)<br>Mumbai- 400 078 | Vs. | Asst. Commissioner of<br>Income Tax-23(1)<br>Mumbai |
| <b>PAN/GIR No.AFDPJ1348C</b>  |     |   |
| <b>(Appellant)</b>  | ..  | <b>(Respondent)</b>                                 |

|                              |                   |
|------------------------------|-------------------|
| Assessee by                  | None              |
| Revenue by                   | Shri Ajay Soneji  |
| <b>Date of Hearing</b>       | <b>16/02/2023</b> |
| <b>Date of Pronouncement</b> | <b>21/02/2023</b> |
|                              |                   |

**आदेश / O R D E R**

**PER M. BALAGANESH (A.M):**

This appeal in ITA No. 4550/Mum/2017 for A.Y.2010-11 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-40, Mumbai in appeal dated 30/01/2015 (Id. CIT(A) in short) against the order of assessment passed u/s.144 r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 23/03/2013 by the Id. Asst. Commissioner of Income Tax-23(1), Mumbai (hereinafter referred to as Id. AO).

2. At the outset, we find that there is continuous absence of the assessee before us from 16/10/2018 onwards despite service of notice on various dates. Since, this is a very old appeal and no purpose would be served by keeping this appeal pending before us. Hence, we proceed to dispose of this appeal on hearing the Id. DR and based on the materials available on record.

3. At the outset, there is a delay of 391 days in filing of appeal by the assessee before us. We find that the assessee had furnished the evidences in the form of medical records that he was unwell and hence, could not file the appeal in time. The condonation petition in this regard has been duly filed by the assessee and hence, considering the interest of substantial justice, we deem it fit to condone the appeal and admit the appeal of the assessee for adjudication.

4. The assessee is an individual and running a proprietary concern in the name and style of M/s. Sanjeevani Enterprises having commission income as a real estate broker and trading in scrap. The return of income for the A.Y.2010-11 was filed by the assessee on 29/09/2010 declaring total income of Rs.3,79,50,245/-. The assessee also paid commission expenses of Rs.13.86 lakhs apart from regular office expenses. The commission income and the commission payments were disclosed by the assessee in its trading and profit and loss account filed alongwith return of income. The Id. AO during the course of assessment proceedings observed that pursuant to the information received from the Investigation Wing that assessee in his statement recorded u/s.131 of the Act on 15/02/2010 before the ADIT Investigation Unit V(1) Mumbai had stated that source of cash

deposited in A/c. No.124010200012786 with Axis Bank, Dadar Branch and in A/c. No.003505006993 with ICICI Bank, Thane was loan received from various parties. This fact was further confirmed by the assessee vide letter dated 07/05/2010 addressed to ADIT Investigation Wing V(1) Mumbai. Later the assessment was reopened by issuance of notice u/s 148 of the Act. Since no satisfactory explanation was given with regard to this transaction during the course of re-assessment proceedings, the Id. AO was forced to determine the total income of the assessee at Rs 4,01,70,450/- and complete the assessment u/s.144 r.w.s. 147 of the Act on 23/03/2013. The Id. AO also observed that assessee in A.Yrs.2007-08, 2008-09 and 2009-10 had declared net income of Rs.6,36,806/-, Rs.4,62,547/- and Rs.82,166/- respectively. The Id. AO observed that assessee is a real estate broker and trading in scrap under the proprietary business i.e. M/s. Sanjeevani Enterprises. The Id. AO also observed that assessee does not maintain books of accounts as required u/s.44AA of the Act. Considering the income declared by the assessee in various years, the Id. AO observed that the total cash deposited by the assessee less cash withdrawals made and less cash income declared by the assessee resulted in negative cash deposit of Rs.50,74,000/- which was treated as unexplained cash credit. In other words, the assessee could not explain the source of cash deposited in the bank to the extent of Rs.50,74,000/- which was added as income of the assessee by the Id. AO in the re-assessment framed on 23/03/2013 u/s.144 r.w.s. 147 of the Act. Parallely in respect of loans received by the assessee in cash from Mr. Siddharth Maitra in the sum of Rs. 1.20 to 1.30 Crores, the Id. AO observed that the same is in violation of provisions of Section 269SS of the Act and accordingly, penalty proceedings u/s.271D of the Act were separately initiated in the re-assessment proceedings itself.

5. The assessee agitated the assessment before the Id.CIT(A). The Id. CIT(A) however, observed that since the assessee had not paid the tax due on the returned income itself, in terms of Section 249 (4) of the Act, the appeal filed by the assessee would not be maintainable. Accordingly, the appeal of the assessee was dismissed by the Id. CIT(A) as not maintainable. Aggrieved by this, the assessee is in appeal before us.

6. Before us also, no evidences has been brought on record by the assessee to prove the fact that the tax due on the returned income has been paid by the assessee. Hence, the Id. CIT(A) was duly justified in dismissing the appeal of the assessee as not admissible for non-payment of tax due on the returned income. Hence, we do not deem it fit to interfere in the said order of the Id. CIT(A). Since the appeal of the assessee is hereby dismissed on this preliminary ground itself, there is no need to go into the merits of the case. Accordingly, the grounds raised by the assessee are hereby dismissed.

**7. In the result, appeal of the assessee is dismissed.**

Order pronounced on 21/02/2023 by way of proper mentioning in the notice board.

**Sd/-**  
**(SANDEEP SINGH KARHAIL)**  
JUDICIAL MEMBER

Mumbai; Dated 21/02/2023  
KARUNA, sr.ps

**Sd/-**  
**(M.BALAGANESH)**  
ACCOUNTANT MEMBER

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)  
**ITAT, Mumbai**