

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

**BEFORE SHRI BASKARAN BR, ACCOUNTANT MEMBER
AND
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.3039/M/2022
Assessment Year: 2013-14**

Mr. Malhar Narendra Punde, A/9, Bhagirathi Safalya, Irla Lane, Vile Parle (West), Mumbai – 400 056 PAN: BLIPP9097E	Vs.	Income Tax Officer- 25(3)(1), C-11, Aayakar Bhavan, Bandra Kurla Complex, Bandra (East), Mumbai - 400050
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Ashwin Chhag, A.R.
Revenue by : Shri A.N. Bhalekar, D.R.

Date of Hearing : 25 . 01 . 2023
Date of Pronouncement : 23 . 02 . 2023

O R D E R

Per : Kuldip Singh, Judicial Member:

The appellant, Mr. Malhar Narendra Punde (hereinafter referred to as 'the assessee') by filing the present appeal, sought to set aside the impugned order dated 03.01.2022 passed by the National Faceless Appeal Centre(NFAC) [Commissioner of Income Tax (Appeals), Delhi] (hereinafter referred to as CIT(A)) qua the assessment year 2013-14 on the grounds inter-alia that :-

"1. On the facts and in the circumstances of the case and in law the National Faceless Appeal Centre, Delhi 'erred in making addition of Rs.38.71,300/ on account of Purchase of Immovable Property without considering submission made by the appellant.

2. *The Appellant prays that the addition of Rs.38,71,300/- made in respect of Purchase of Immovable Property be deleted.*
3. *The appellant Prays to accept the additional evidence produced under Rule 46A of the Income Tax Rules, 1962.*
4. *On the facts and in the circumstances of the case and in law, the National Faceless Appeal Centre, Delhi erred in levying interest under Section 234 of the Act.*
5. *On the facts and in the circumstances of the case in law, the National Faceless Appeal Centre, Delhi erred in initiating penalty proceedings under section 271 (1) (c) of Income tax Act, 1961.*
6. *Further detailed submission will be given at the time of hearing.*
7. *Appellants Company craves leaves to add, alter or modify either of the grounds of appeal on or before the hearing of the appeal.”*

2. Briefly stated facts necessary for consideration and adjudication of the issues at hand are: the Assessing Officer (AO) from the computer system of department (ITD) noticed from the return of income filed by the assessee that the assessee has purchased immovable property of Rs.38,71,300/-. On the basis of this information assessment for the year under consideration was reopened. In compliance to the notice issued under section 148 of the Income Tax Act, 1961 (for short 'the Act') and statutory notice issued under section 142(1) of the Act the assessee has failed to file any details called for. Consequently the AO framed the assessment under section 144 read with section 147 of the Act at the total income of Rs.38,71,300/-.

3. The assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has confirmed the addition by dismissing the appeal. 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. Bare perusal of the impugned order passed by Ld. CIT(A) goes to prove that the assessee is an individual currently pursuing his studies. The assessee brought the fact before the Ld. CIT(A) that he has not been provided with opportunity of being heard by the AO. It is also brought on record by the assessee by way of filing additional evidence that the assessee has purchased the immovable property of Rs.38,71,300/- qua which payment of sale consideration was made by his father Mr. Narendra Punde who is non resident Indian from financial year 2011 to 31.12.2016. He has also brought on record certificate of service of his father Mr. Narendra Punde and copy of bank statement as proof of payment of sale consideration by his father. The assessee has also brought on record information regarding source of funds along with evidence.

6. But strangely enough the Ld. CIT(A) has dismissed the application filed by the assessee for leading additional evidence under rule 46A on the ground that since sufficient opportunities have been given to the assessee by the AO for filing relevant document/details/evidences but the same has not been filed and

hence proceeded to dismiss the appeal which is a blatant miscarriage of justice.

7. When undisputedly the assessee was ex-parte before the AO and has brought on record all the evidences before the Ld. CIT(A) who has refused to examine the same merely on the basis of conjectures and surmises that sufficient opportunities have already been given to the assessee. In these circumstances the impugned order passed by the Ld. CIT(A) is not sustainable, hence set aside. All the evidences/documents brought on record by the assessee by way of additional evidence which is necessary for adjudication of the issue at hand is allowed and Ld. CIT(A) is directed to decide the appeal afresh after providing opportunity of being heard to the assessee by considering all the evidences brought on record by the assessee.

8. Consequently the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 23.02.2023.

**Sd/-
(BASKARAN BR)
ACCOUNTANT MEMBER**

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

Mumbai, Dated: 23.02.2023.

* 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.