

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

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.1385/M/2023**  
**Assessment Year: 2014-15**

M/s. Shaktishali Transport Carrier, Haji Noor Mohammed, Ahmad Marg, Masjid Bander Road, Damar Gally, Mumbai – 400 009 <b>PAN: AAKFS9821K</b>	Vs.	Income Tax Officer, Ward-17(3)(3), Income Tax Department, Mumbai
(Appellant)		(Respondent)

**Present for:**

Assessee by : None  
Revenue by : Shri B. Laxmi Kanth, D.R.

Date of Hearing : 11 . 07 . 2023  
Date of Pronouncement : 20 . 07 . 2023

**O R D E R**

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

The appellant, M/s. Shaktishali Transport Carrier (hereinafter referred to as ‘the assessee’) by filing the present appeal, sought to set aside the impugned order dated 22.04.2022 passed by the National Faceless Appeal Centre(NFAC) [Commissioner of Income Tax (Appeals), Delhi] (hereinafter referred to as CIT(A)) qua the assessment year 2014-15 on the grounds inter-alia that :-

*“On the facts and circumstance of the case, the learned CIT(A) has erred in confirming the ex-parte order passed by the ld. Assessing Officer without taking into consideration the actual income of the appellant.”*

2. Briefly stated facts necessary for consideration and adjudication of the issues at hand are : assessee is a partnership firm

consisting of two partners namely Shri B.R. Purohit and Shri R.S. Vora. The assessee's return of income declaring total income at Rs.44,436/- filed for the year under consideration was subjected to scrutiny. The assessee failed to appear before the Assessing Officer (AO) despite numerous notices issued. On account of non appearance of the assessee the AO also issued notice under section 271(1)(b) of the Income Tax Act, 1961 (for short 'the Act'). The AO noticed that the assessee has debited the total expenses to the profit & loss account to the tune of Rs.78,95,900/-. Since the assessee has not filed any details of the expenses the AO proceeded to make disallowance @ 25% of the total expenses which comes to Rs.78,95,900/- and thereby framed the assessment under section 144 of the Act.

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 due to non prosecution. Feeling aggrieved with the impugned order passed by the Ld. CIT(A) the assessee has come up before the Tribunal by way of filing the present appeal.

4. Notice for hearing was issued to the assessee which was received back unserved with the remarks that "no such person is residing at the given address". However, perusal of the judicial file shows that the assessee filed letter of authority in the name of chartered accountant Mr. Motilal Ranga but he has not preferred to put in appearance. So the Bench has decided to proceed with the present appeal on the basis of material available on record with the assistance of the Ld. D.R. for the Revenue.

5. I have heard the Ld. D.R. for the Revenue, 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 case law relied upon.

6. Bare perusal of the order passed by the Ld. CIT(A) goes to prove that the impugned order has been passed in the absence of the assessee as he has reportedly not appeared despite issuance of notice. Keeping in view the fact that the assessee is not reportedly available at the given address on which notice was issued the Ld. CIT(A) could have disposed of the appeal on merits rather than non prosecution by the assessee. Since the AO has also passed an ex-parte order and no material is available there that the assessee was actually served and hence no purpose would be served by keeping the appeal pending and ultimately it is required to be disposed of on merits by procuring the presence of the assessee. So it would be in the interest of justice to remit the case back to the Ld. CIT(A) to decide afresh after procuring the present of the accused by way of dasti summons and thereafter by providing adequate opportunity of being heard.

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

**Order pronounced in the open court on 20.07.2023.**

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

Mumbai, Dated: 20.07.2023.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.