

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

**Before Shri Prashant Maharishi, Accountant Member &
Shri Narender Kumar Choudhry, Judicial Member**

ITA No. 1808/Mum/2023

(Assessment Year: 2012-13)

And

ITA No. 1807/Mum/2023

(Assessment Year: 2007-08)

M/s. Shubh Exports
407 Panchratna
Mama Parmanand
Marg, Opera House
Mumbai 400004
PAN – AAGFS6889M

Appellant

CIT
Aayakar Bhavan, M.K. Marg
Vs. Mumbai 400020

Respondent

Appellant by: Ms. Ekta Aagam Sanghavi, Ld. CA
Respondent by: Shri Swapnil Sawant, Ld. DR

Date of Hearing: 03.08.2023/07.08.2023
Date of Pronouncement: 18.08.2023

ORDER

Per: N.K. Choudhry, JM

These appeals have been preferred by the Assessee against the orders dated 06.03.2023 and 07.03.2023, impugned herein passed by the learned Commissioner of Income Tax/National Faceless Appeal Centre, Delhi (NFAC) (in short Id. Commissioner) under section 250 of the Income Tax Act, 1961 (in short 'the Act') for AYs 2012-13 and 2007-08).

2. As the facts and issues involved in these appeals are identical, hence for the sake of brevity, we are deciding ITA no 1808/Mum/2023 as a lead case.

In this case, the AO vide Assessment order made the disallowance of Rs.1,05,00,000/- on account of bogus purchase made from bogus parties. The Assessee being aggrieved, challenged the said addition before the Id. Commissioner, who though afforded various opportunities of being heard, by issuing notices for hearing, however, the Assessee neither appeared nor filed any reply/written submissions. Therefore, in the constrained circumstances, the Ld. Commissioner vide impugned order, dismissed the appeal of the Assessee in limini but not on merits.

3. The Assessee being aggrieved against the impugned order has preferred this appeal and by filing written submissions claimed that the Assessee Firm become NPA on 12/01/2016 and the business and banks accounts also became inoperative, and the staff also left the jobs and Mr. Ajay Gandhi who had all alone been managing the firm himself is 70-year-old and has his own health issues and lost his wife and mother-in-law. Even otherwise the erstwhile CA who managed the firm's tax matters had access to the portal, did not inform the Assessee about the notices. We have given thoughtful consideration to the claim made by the Assessee and observe that the Assessee by giving reasons for non-appearance before the Ld. Commissioner also levelled allegations against erstwhile Ld. CA who managed the firm's tax matters had access to the portal, did not inform the Assessee about the

notices. In our considered view the allegation about the omissions on the part of the Ld. CA/Ld. Advocate is unethical. In the absence of corroborative material, such type of allegation cannot be encouraged, until and unless the person against whom allegation made, honestly and clearly concede the same, and therefore we inclined not to grant any relief on this count. However considering the medical reasons as such the open heart surgery of the active partner of the Assessee firm, who also lost his wife and mother in law respectively on 01.07.2021 and 26.02.2022, which prima facie appears to be genuine and the fact that the Id. Commissioner failed to pass the order on merits, we therefore for just and proper decision of the case and for the ends of substantial justice, are inclined to remand the instant case to the file of the Id. Commissioner for decision afresh, suffice to say by affording reasonable opportunity of being heard to the Assessee .

We also direct the Assessee to appear as and when would be required before the Ld. Commissioner and to file relevant documents which would be needed by the Id. Commissioner for proper and just decision in the case. In case of further default, the Assessee shall not be entitled for any leniency.

Consequently, the appeal is allowed.

4. Coming to ITA no. 1807/Mum/2023, though by considering the peculiar fact that this case pertains to AY 2007-08, we expressed our inclination to impose the cost in this case, however considering the specific submission of Ld. AR qua parity/medical reasons, we are allowing this appeal without imposing any cost, hence in view of our decision in ITA

1808/Mum/2023, this appeal is also allowed on the same terms.

5. In the result, both the appeals filed by the Assesseestands allowed for statistical purposes.

Pronounced in the open Court on 18th August, 2023.

Sd/-

**(Prashant Maharishi)
Accountant Member**

Sd/-

**(Narender Kumar Choudhry)
Judicial Member**

Mumbai

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT concerned*
4. *The DR, ITAT, Mumbai*
5. *Guard File*

By Order

//True Copy//

*Assistant Registrar
ITAT, Mumbai*

n.p.

