

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

**BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER  
AND  
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA Nos.1545 & 1546/M/2023  
Assessment Years: 2013-14 & 2014-15**

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|---|-----|---|
| Shri Chetas Karamshi<br>Nandu,<br>B/304, Jay Apartment,<br>Nehru Road,<br>Santacruz (East),<br>Mumbai – 400 055<br><b>PAN: AIJPN0030C</b> | Vs. | Income Tax Officer-<br>22(1)(1),<br>Piramal Chambers,<br>Lal Buag,<br>Parel, Mumbai – 400 012 |
| (Appellant)   |     | (Respondent)  |

**Present for:**

Assessee by : None  
Revenue by : Shri H.M. Bhatt, Sr. A.R.

Date of Hearing : 20 . 07 . 2023  
Date of Pronouncement : 26 . 07 . 2023

**O R D E R**

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

The appellant, Shri Chetas Karamshi Nandu (hereinafter referred to as ‘the assessee’) by filing the present appeals, sought to set aside the impugned orders dated 06.03.2023 & 07.03.2023 passed by the National Faceless Appeal Centre(NFAC) [Commissioner of Income Tax (Appeals), Delhi] (hereinafter referred to as CIT(A)] qua the assessment years 2013-14 & 2014-15 on identically worded grounds except the difference in amount

of addition/disallowance (for the sake of brevity grounds from A.Y.2013-14 are taken) inter-alia that:-

*“i. That having regard to the facts and circumstances of the case, Learned CIT (A), has erred in law and on facts in levying penalty without giving an adequate opportunity of being heard and by not observing the principles of natural justice.*

*ii. That the Leamed CIT (A), has misdirected himself in law in levying penalty under section 271(1)(b) of the IT. Act, 1961 of Rs.10,000/- and his order is thus prima facie devoid of merits and contrary to law and needs to be quashed or set aside and prayed for accordingly.*

*iii. The Appellant under the circumstances aggrieved by the said order craves to add, alter, delete or modify any of the above grounds of appeal and request to consider each of the above grounds without prejudice to one another.*

**PRAYER**

*The appellant prays that relief in light of the grounds of appeal or any other relief as deemed fit and just on the facts and in the circumstances of the case be granted.”*

2. Briefly stated facts necessary for consideration and adjudication of the issues in both the appeals at hand are: the assessee being an individual earned income from capital gain, income from other sources, salary, interest and business income. The assessee's return of income filed for the years under consideration was subjected to scrutiny. During the assessment proceedings the Assessing Officer (AO) issued notices under section 148, 142 (1) of the Income Tax Act, 1961 (for short the Act) but the assessee has failed to respond. Thereafter notices under section 142(1) along with penalty notices were issued calling for explanation as to why the penalty under section 271(1)(b) of the Act should not be imposed for failure to comply with the above notices. On non-compliance of these notices the AO levied penalty

of Rs.10,000/- by passing an order under section 271(1)(b) of the Act.

4. The assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has confirmed the penalty 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 present appeals.

5. Notice of the appeal was issued to the assessee through email as well as registered post with acknowledgment due (RPAD) but not received back delivered or undelivered. Since a period of more than one month has already lapsed from notice sent through email as well as RPAD it is presumed to have been delivered but assessee has not come present to prosecute present appeal. So the Bench has decided to proceed with the present appeal on the basis of documents available on record with the assistance of the Ld. D.R. for the Revenue.

6. We 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.

7. Bare perusal of the impugned order passed by the Ld. CIT(A) goes to prove that the Ld. CIT(A) stated to have issued three notices to the assessee but assessee reported to have not responded and thereafter Ld. CIT(A) confirmed the penalty by dismissing the present appeal due to non prosecution without entering into the merits of the case.

8. It is settled principle of law by the decision rendered by Hon'ble Bombay High Court in case of Commissioner of Income-Tax (Central) Nagpur vs. Premkumar Arjundas Luthra (HUF) [2016] 69 taxmann.com 407 (Bombay) that even if the assessee has not appeared before the Ld. CIT(A), appeal is required to be decided on merits by applying his mind and the Ld. CIT(A) is not empowered to dismiss the appeal for want of non prosecution. Prima facie from the impugned order it is also proved that adequate opportunity has not been given to the assessee as no fact proving service of the assessee has been brought on record.

9. In view of the matter we are of the considered view that impugned order passed by Ld. CIT(A) is not sustainable, hence set aside and remitted back to the Ld. CIT(A) to decide fresh after providing adequate opportunity of being heard to the assessee.

10. Consequently both the appeals filed by the assessee are allowed for statistical purposes.

**Order pronounced in the open court on 26.07.2023.**

**Sd/-  
(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER**

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

Mumbai, Dated: 26.07.2023.

\* 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.