

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

**BEFORE SHRI VIKAS AWASTHY (JUDICIAL MEMBER)
AND
MS. PADMAVATHY S. (ACCOUNTANT MEMBER)**

**I.T.A. No.1338/Mum/2023
(Assessment year 2012-13)**

Mr. Hariram Pahlumal Bhambhani 7 REX Chambers, Ground Floor, W.H. Marg, Indira Dock, Opp. Red Gate, Mumbai-400 038 PAN : AABPB0908P	vs	ACIT, Circle-9(2)(1), Mumbai
APPELLANT		RESPONDENT

Assessee represented by	Shri Dharmesh Shah a’w Ms. Mitali Gopani
Department represented by	Shri Prashant Mahajan (SR. AR.)

Date of hearing	10-07-2023
Date of pronouncement	10-07-2023

ORDER

PER : MS PADMAVATHY S. (AM)

This appeal is against the order of the Commissioner of Income-tax (National Faceless Appeal Centre, Delhi (in short, ‘the CIT(A)’) dated 24/03/2023 for A.Y. 2012-13. The assessee raised the following grounds of appeal:-

“The following grounds of appeal are taken independently and without prejudice to one another.

1. *The Ld. Commissioner of Income Tax (Appeals) has erred in dismissing the appeal of the assessee ex-parte, without providing reasonable opportunity of being heard to the assessee.*

1.1 The Ld. Commissioner of Income Tax (Appeals) has dismissed the appeal of the assessee ex-parte for non - compliance of the notices of hearing. The last notice in this case was issued for 15-02-2023. The assessee has applied for extension of time for making the written submissions vide acknowledgement, dated 15-02-2023.

Subsequently, the assessee had tried to upload the written submissions many times on 24-03-2023, but the e-portal has not allowed the uploading of the written submissions.

The assessee has thus been denied the proper opportunity of being heard. As such the impugned order passed by the Commissioner of Income Tax (Appeals) is not as per law and is invalid. The same may be cancelled/quashed.

2. *The Ld. Commissioner of Income Tax (Appeals) has erred in dismissing the appeal of the assessee on merits, in a single sentence, without discussing at all the merits of the additions made by the Assessing Officer.*

3. *The following additions made by the Assessing Officer and confirmed by the Commissioner of Income Tax (Appeals) are unjustified, invalid and unsustainable in law. The same may be deleted.*

a. *Addition of Rs. 11,583/- on account of alleged income not shown in the Return of Income, for want of reconciliation of the receipts as per Form No. 26AS with the Return of Income.*

b. *Addition of Rs./2,50,00,000/- as deemed dividends u/s 2(22)(e) of the Income Tax Act, 1961.*

4. *The addition of Rs.2,50,00,000/- made by the Assessing Officer as deemed dividends u/s 2(22)(e) of the Income tax Act, is beyond jurisdiction, as it did not come within the scope of the income, that has escaped assessment as, mentioned in the reasons recorded for re-opening of the assessment.”*

2. The assessee is an individual, filed the return of income for A.Y. 2012-13 on 14/02/2013 declaring total income at Rs.18,48,850/-. The return was processed under section 143(1) of the Income-tax Act, 1961 (in short, ‘the Act’) on 06/04/2013. Subsequently, the assessment was reopened by issue of notice under section 148 for the reason that the assessee has entered into certain transactions with one M/s Bhambhani

Shipping Ltd, which are suspicious in nature. The Assessing Officer subsequently issued notice under section 142(1) calling for various details. Subsequently, the assessment was completed under section 143(3) read with section 147 where the Assessing Officer made an addition of Rs.2,50,00,000/- as deemed dividend under section 2(22)(e) of the Act towards transfer of money from the account of M/s Bhambhani Shipping Ltd to the assessee. The Assessing Officer also made an addition of Rs.11,583/- towards mismatch between the income declared by the assessee and the income as per form 26AS. Aggrieved, the assessee filed appeal before the CIT(A), who dismissed the appeal exparte since there was no representation by the assessee before the CIT(A).

3. During the course of hearing, the Ld.AR submitted that the assessee could not appear before the CIT(A) due to which the issue could not be contended on merits before the CIT(A). The ld AR further submitted that the assessee had applied for extension of time for filing the details in response to last of the notices of the CIT(A) on 15.02.2023. The ld AR also submitted that the e-portal did not allow uploading of the written submissions though the assessee made several attempts on 24.03.2023. Accordingly, the Ld.AR prayed for one more opportunity to represent the case on merits before the CIT(A). The Ld.DR did not raise any objections to the said prayer.

4. We heard the parties and perused the material on record. We notice that the CIT(A) in his order (page 72, para 4) had listed the number of notices (totaling to 10) issued to the assessee to which there was no response from the assessee. Therefore, the CIT(A) dismissed the appeal based on the grounds of appeal and available materials on record. Since the assessee did not appear before the CIT(A) to present the case on merits, in the interest of substantial justice, we are inclined to provide one more

opportunity to the assessee. We, accordingly, restore the issue back to the CIT(A) for fresh adjudication in accordance with law. The assessee is directed to respond to the hearing notices to be issued by the CIT(A) and cooperate with the appellate proceedings by submitting all the relevant details.

5. In the result, appeal is allowed for statistical purpose.

Order pronounced in the open court at the time of hearing on 10/07/2023.

Sd/-

sd/-

(VIKAS AWASTHI)	(PADMAVATHY S)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, Dt :10th July, 2023
Pavanan

प्रतिलिपि अग्रेषित Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

Asstt. Registrar / Senior Private Secretary
ITAT, Mumbai

		Date	Initial	
1.	Draft dictated on	10/07		Sr.PS
2.	Draft placed before author	12/07		Sr.PS
3.	Draft proposed & placed before the second member			JM/AM
4.	Draft discussed/approved by Second Member.			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			Sr.PS/PS
6.	Kept for pronouncement on			Sr.PS
7.	File sent to the Bench Clerk			Sr.PS
8.	Date on which file goes to the AR			
9.	Date on which file goes to the Head Clerk.			
10.	Date of dispatch of Order.			
11.	Dictation Pad is enclosed	Yes		