

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**MUMBAI BENCH "D" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)**  
**AND**  
**SHRI SANDEEP SINGH KARHAIL (JUDICIAL MEMBER)**

**ITA No. 2388/MUM/2023**  
**Assessment Year: 2007-08**

Murlimanhor Chetandas  
Agarwal,  
DC-6210, Bharat Dimaond  
Bourse, BKC Bandra East  
Mumbai-400051.

**PAN No. AABPA 4295 N**

**Appellant**

DCIT-19(1),  
Matru Mandir,  
Mumbai-400007.

**Vs.**

**Respondent**

**Assessee by** : Mr. Suchak Anchaliya  
**Revenue by** : Mrs. Mahita Nair, DR

Date of Hearing : 19/10/2023  
Date of pronouncement : 25/10/2023

**ORDER**

**PER OM PRAKASH KANT, AM**

This appeal by the assessee is directed against order dated 15.05.2023 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment year 2007-08, raising following grounds:

*1. On the facts and in the circumstances of the case and in law, the Ld. NFAC erred in passing the order u/s 250 of the Act, ex-parte, without appreciating the fact that the appellant had duly made an application seeking adjournment of hearing, which was overlooked by the Ld. NFAC and the impugned order was passed without considering the adjournment request, which is against the principles of natural justice.*



*2. On the facts and in the circumstances of the case and in law the Ld. NFAC erred in not considering that the assumption of jurisdiction by the Ld. Assessing Officer is bad in law as the conditions laid down under the Act for initiating reassessment proceeding u/s 147 of the Act have not been fulfilled.*

*3. On the facts and in the circumstances of the case and in law, the Ld. NFAC erred in confirming the 100% addition of the Purchases amounting to Rs. 23,31,177/- by treating the genuine purchases as accommodation entries.*

*4. On the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in confirming the addition made by Id. AO, without providing any opportunity of cross examination, without any corroborative evidence and without providing copy of statements relied upon.*

2. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. The Ld. Counsel for the assessee submitted that though the assessee filed all the relevant details before the Ld. CIT(A) but the Ld. CIT(A) has passed the order ex-parte without deciding the appeal on merit. We find that the Ld. CIT(A) in para 2 of the impugned order has mentioned non compliance of various notices issued and passed the impugned order invoking the decision of the Co-ordinate Bench of the Tribunal in the case of CIT v. Multiplan India Pvt. Ltd. reported in 38 ITD 320 (Delhi). The relevant finding of the Ld. CIT(A) is reproduced as under:

*“4.2 The Delhi Tribunal in CIT Vs. Multiplan India Pvt. Ltd. as reported in 38 ITD 320 (Delhi) when faced with a similar situation of non-prosecution of appeal, dismissed the appeal of revenue.*

*4.3 Reliance is also placed in the case of Vipul Logistic & Warehousing (P) Ltd Vs. ITO, wherein the Hon'ble Delhi ITAT has confirmed even the order of CIT(A) who dismissed the appeal of the taxpayer when there was no response to the notices issued. The observations and decision of the Hon'ble ITAT are as under:*



*"We have heard rival submissions and have gone through the entire material available on record. In the grounds filed before us, assessee has not raised any such ground about the assessment being time barred. Therefore, since the plea raised by the assessee does not arise out of its grounds of appeal, the same is dismissed. We see no infirmity on the order of CIT(A) which is passed ex-parte due to deliberate non-cooperation of the assessee. Therefore, the assessee's appeal is dismissed."*

*4.4 In view of these facts, I am of the opinion that no interference is called for in the AO's order and therefore, the grounds of appeal are dismissed."*

2.1 We find that under the provisions of section 250(6) of the Income-tax Act, 1961 (in short 'the Act'), the Ld. CIT(A) is required to decide the grounds raised by the assessee and pass a reasoned order even in absence of any representation by the assessee. Since, in the instant case, the Ld. CIT(A) has not decided the issue in dispute on merit and therefore, we feel it appropriate to set aside the order of the Ld. CIT(A) and restore the matter back to him for deciding afresh after taking into consideration submission of the assessee. The grounds of appeal of the assessee are accordingly allowed for statistical purposes.

3. In the result, the appeal filed by the assessee is allowed for statistical purposes.

**Order pronounced in the open Court on 25/10/2023.**

**Sd/-**  
**(SANDEEP SINGH KARHAIL)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(OM PRAKASH KANT)**  
**ACCOUNTANT MEMBER**

Mumbai;  
Dated: 25/10/2023  
Rahul Sharma, Sr. P.S.



**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,  
(Assistant Registrar)  
**ITAT, Mumbai**