

IN THE INCOME TAX APPELLATE TRIBUNAL  
“SMC” BENCH, MUMBAI  
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 2530/Mum/2023  
(A.Y: 2011-12)

Indira Gandhi, 101, 1 <sup>st</sup> Flr, Tulip E & F CHS Ltd, MayureshPark, Bhandup (West), Mumbai-400078.	Vs.	ITO – 29(1)(5) 107, 1 <sup>st</sup> Floor, C-10, PratyakshaKarBhavan, BKC, Mumbai-400078.
PAN/GIR No. : AJZPG7601H		
Appellant	..	Respondent

Assessee by :	Shri Tanmay Milind Phadke.AR
Revenue by :	Shri G.J. Ninawe. Sr. DR

Date of Hearing	01.01.2023
Date of Pronouncement	03.11.2023

आदेश / O R D E R

**PER PAVAN KUMAR GADALE JM:**

The appeal is filed by the assessee against the order of the National Faceless Appeal Centre(NFAC), Delhi / CIT(A) passed u/sec143(3) r.w.s 147 and U/sec 250 of the Act. The assessee has raised the following grounds of appeal:

- 1. On the facts and circumstances of the case and in law, the National Faceless Appeal Centre/Commissioner of Income Tax (Appeals) [“the learned Commissioner (Appeals)"] erred in confirming the addition of Rs19,21,187/- under Section 68 of the Act which was made by the learned assessing officer on the basis of the deposits appearing in the bank account*

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*with Bank of India. It is well settled principle of law that section 68 addition cannot be made on the basis of entries appearing in the bank statement in the absence of books of accounts maintained by the Assessee Thus, the said addition of Rs. 19,21,187/- being contrary to the decision of the jurisdictional Hon'ble Bombay High Court in the case of "CIT vs. Bhaichand NGandhi 141 ITR 67 (Bom)" may be deleted.*

*2. Without prejudice to the above, on the facts and circumstances of the case and in law, the "the learned Commissioner (Appeals) erred in deciding the appeal ex-parte in violation of the principle of natural justice Thus, the order dated 10.05.2023 may be set aside and the matter may be restored back to the file of the learned Commissioner (Appeals)*

*3 Without prejudice to the above, on the facts and circumstances of the case and in law, the order dated 10.05.2023 as passed by the learned Commissioner (Appeals) is bad in law since it dismisses the appeal on the reason of non- prosecution and does not adjudicate on the grounds/additional grounds of appeal and the issues under consideration The said order being in violation of the provisions of Section 250 and 251 of the Act and the decision of the Hon'ble jurisdictional Bombay High Court in "CIT vs. Premkumar Arjundas Luthra (HUF)-[2016] 69 taxmann.com 407 (Bombay)" may be quashed.*

*4 Without prejudice to the above, on the facts and circumstances of the case and in law, the addition of Rs. 19.21,187/- being unsustainable in law may be deleted.*

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*5The Appellant craves leave to add, alter, rescind, or amend any of the above grounds of appeal..*

2..The brief facts of the case that, the assessee has filed the return of income for the A.Y 2010-11 on 29.03.2012 disclosing a total income of Rs.4,590/- and the return of income was processed u/s 143(1) of the Act. Subsequently the Assessing Officer (AO) has received the information that the assessee has made time deposits exceeding Rs. 2 lakhs in the F.Y 2010-11, therefore the AO has reason to believe that the income has escaped assessment and issued notice u/s 148 of the Act. In compliance to notice, the assessee has filed the return of income on 09.05.2018 disclosing a total income of Rs.2,37,049/- and the assessee was provided copy of the reasons recorded for reopening of assessment and further the notice u/sec 143(2) and U/sec142(1) of the Act are issued. In compliance, the Ld. AR of the assessee appeared from time to time and submitted the details and the AO on verification of bank statements found that there are credits on various dates aggregating to Rs. 19,21,187/- and the assessee was called to explain the sources. Whereas the assessee has filed the explanations vide letter

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dated 27-11-2018. The A.O has dealt on the facts and explanations and was not satisfied with the submissions as no documentary evidence was submitted in support of high value deposits and made addition of Rs. 19,21,187/- and assessed the total income of Rs.21,58,240/- and passed the order u/sec 143(3) r.w.s 147 of the Act dated 07.12.2018.

3. Aggrieved by the order, the assessee has filed an appeal before the CIT(A), whereas the CIT(A) has considered the grounds of appeal, statement of facts and findings of the AO and has issued notices of hearing and since there was no compliance by the assessee to notices. Therefore the CIT(A) considering the information on record has confirmed the action of the A.O and dismissed the appeal. Aggrieved by the order of the CIT(A), the assessee has filed an appeal before the Hon'ble Tribunal.

4. At the time of hearing, the Ld. AR submitted that the CIT(A) has erred in confirming the action of the Assessing officer overlooking the submissions made in the assessment proceedings. Further the assessee has a good case on merits and shall substantiate with the material evidences

and prayed for an opportunity to explain before the lower authorities. Contra, the Ld. DR supported the order of the CIT(A).

5. Heard the rival submissions and perused the material on record. Prima-facie the CIT(A) has passed the order considering the fact that there is no appearance in spite of providing adequate opportunity of hearing and the notices were issued. Therefore, the CIT(A) was of the opinion that the assessee is not interested in prosecuting the appeal and dismissed the appeal ex-parte confirming the action of the assessing officer. The Ld. CIT(A) has issued the notices of hearing referred at Page 3 of the order, but there was no response and thus the Ld.CIT(A) came to a conclusion that the assessee is not interested and decided the appeal based on the information available on record. Whereas the assessee has raised grounds of appeal challenging the additions of the A.O and there could be various reasons for non appearance which cannot be overruled. Therefore, considering the principles of natural justice shall provide with one more opportunity of hearing to the assessee to substantiate the case with evidences and information. Accordingly, set aside the order of the CIT(A) and remit the entire disputed issues to the file of the CIT(A) to adjudicate

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afresh and the assessee should be provided adequate opportunity of hearing and shall cooperate in submitting the information for early disposal of the appeal. Accordingly, allow the grounds of appeal of the assessee for statistical purposes.

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

Order pronounced in the open court on 03.11.2023.

Sd/-  
(PAVAN KUMAR GADALE)  
**JUDICIAL MEMBER**

Mumbai, Dated 03.11.2023

KRK, PS

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent
3. The CIT (Judicial)
4. The PCIT
5. DR, ITAT, Mumbai
6. Guard File

आदेशानुसार / BY ORDER,

सत्यापित प्रति //True Copy//

1.

*ITA No. 2530/Mum/2023*  
*Indira Gandhi, Mumbai.*

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**( Asst. Registrar)**  
ITAT, Mumbai