

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

**SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 2084/MUM/2023
(Assessment Year: 2013-14)**

Zulfikar Kasam Momin,
101 Lovely Home, S.V. Road ,
Jogeshwari (West),
Mumbai - 400102
[PAN: AAHPM4235E]

..... **Appellant**

**Income Tax Officer, 31(3)(5),
Mumbai,**
C-13, Room No. 405, 4th Floor,
Pratyakshakar Bhavan,
Bandra Kurla Complex, Bandra (E),
Mumbai - 400051

Vs
..... **Respondent**

Appearance

For the Appellant/Assessee : Ms. Zeal Savla
For the Respondent/Department : Shri Ajudiya Manish

Date

Conclusion of hearing : 04.12.2023
Pronouncement of order : 05.12.2023

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Appellant has challenged the order, dated 19/05/2023, passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'the CIT(A)'] for the Assessment Year 2013-14, whereby the Ld. CIT(A) had dismissed the appeal of the Assessee against the Assessment Order, dated 30/03/2016, passed under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

2. The Appellant has raised following grounds of appeal:

"1) On the facts and circumstances of the case and in law, the learned CIT(A) erred in confirming the order u/s 250 without giving opportunity.

2. On the facts and circumstances of the case and in law, the learned CIT(A) erred in upholding the addition of Rs. 2,11,31,780/- out of unsecured loans.

3. On the facts and circumstances of the case and in law, the learned CIT(A) erred in upholding the addition of Rs. 1,53,66,490/- out of cash deposits by treating the same as Cash credits u/s 68 of the Income Tax Act, 1961.

4. The Appellant craves leave to add, amend, alter or delete any or all the above grounds of appeal."

3. The relevant facts in brief are that the Appellant is an individual, engaged in the business of trading and export of granite, marble and stone products. The Appellant filed return of income for the Assessment Year 2013-14 declaring total income of INR 5,72,890/-. The case of the Appellant was selected for scrutiny and assessment was framed on the Appellant vide order dated 30/03/2016, passed under Section 143(3) of the Act at total assessed income of INR 3,70,71,253/- after making addition of INR 2,11,31,780/- in respect of unsecured loans and INR 1,53,66,490/- in respect of cash credits.

4. Being aggrieved, the Appellant preferred appeal before CIT(A) against the Assessment Order, dated 30/03/2016, which was dismissed by the CIT(A) vide order, dated 19/05/2023, on account of non-prosecution since the Appellant failed to file submissions/documents despite various notices issued electronically after the migration of appeal to National Faceless Appeal Centre.

5. The Appellant has preferred the present appeal before the Tribunal challenging the above dismissal order passed by the CIT(A).

6. In Ground No. 1 raised in the appeal, the Appellant has contended

that the order passed by the CIT(A) is bad in law as the same has been passed ex-parte without providing sufficient opportunity of being heard to the Appellant. On perusal of the record, we found that the Appellant was proceeded ex-parte and the CIT(A) had dismissed the appeal observing that the Appellant was not interested in prosecuting the appeal. The Ld. Departmental Representative supported the order passed by the CIT(A) and the Appellant had failed to comply with the notices issued during the appellate proceedings and therefore, the CIT(A) was justified in dismissing the appeal.

7. We have considered the rival submissions and perused the material on record. In the case of Commissioner of Income Tax (Central), Nagpur Vs. Premkumar Arjundas Luthra (HUF): [2016] 240 Taxman 133 (Bombay)/[2017] 297 CTR 614 (Bombay)[25-04-2016], it has been held by the Hon'ble Bombay High Court that the provisions of the Act do not empower the CIT(A) to dismiss the appeal preferred by an assessee on account of non-prosecution. Accordingly, the CIT(A) was required to dispose of the appeal on merits rather than dismiss the same on account of non-prosecution. Therefore, we set aside the order, dated 19/05/2023, passed by the CIT(A) and restore the appeal to the file of the CIT(A) with the direction to decide the appeal on merits as per law after granting the Appellant reasonable opportunity of being heard. The Appellant has directed to cooperate in the appellate proceedings and not seek unnecessary adjournment. Further, the Appellant is also directed to file all the relevant submissions/documents/details on which the Appellant wishes to place reliance before the CIT(A) forthwith on receiving notice of hearing. In terms of the above, Ground No. 1 raised by the Appellant is allowed for statistical purposes whereas all the other

grounds raised by the Appellant are dismissed as being infructuous.

8. In result, the present appeal preferred by the Assessee is allowed for statistical purposes.

Order pronounced on 05.12.2023.

Sd/-
(Prashant Maharishi)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 05.12.2023
Alindra, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT,
Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai