

IN THE INCOME TAX APPELLATE TRIBUNAL
Mumbai "D" Bench, Mumbai.

Before Justice (Retd.) C.V. Bhadang (President) & Shri B.R. Baskaran (AM)

I.T.A. No. 2771/Mum/2023 (A.Y. 2010-11)

Milan Shantilal Mehta C/o. G.P. Mehta & Co. CAs 807, Tulsiani Chambers Nariman Point Mumbai-400 020. PAN : AIEPM0706B (Appellant)	Vs.	ITO, Ward 2(5) Ashar I.T. Park Room No. 25B 6 th Floor Wagle Industrial Estate, Thane-West Maharashtra-400604. (Respondent)
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Assessee by	Shri G.P. Mehta
Department by	Shri Sunil Mathews
Date of Hearing	06.12.2023
Date of Pronouncement	12.12.2023

ORDER

Per B.R.Baskaran (AM) :-

The assessee has filed this appeal challenging the order dated 22.6.2023 passed by the learned CIT(A), National Faceless Appeal Centre, Delhi and it relates to A.Y. 2010-11. The grounds of appeal urged by the assessee give rise two issues, viz.,

- (a) Validity of reopening of the assessment and
- (b) Addition of Rs. 1.61 crores relating to unexplained bank deposits.

2. The Learned counsel appearing for the assessee submitted that the learned CIT(A) has passed his order ex-parte. He submitted that the assessee was constrained to take adjournments before Ld CIT(A) for certain reasons. However, the learned CIT(A), without considering the adjournment letters, has proceeded to dismiss the appeal of the assessee in limine and further, did not decide any of the issues on merit. Accordingly, the learned AR prayed that the order of Ld CIT(A) may be set aside and all the issues contested in

this appeal may kindly be restored to the file of the learned CIT(A) for adjudicating them on merits.

3. The Learned DR, however, submitted that the assessee did not cooperate with the Assessing Officer. Hence the Assessing Officer was also constrained to pass the assessment order to the best of his judgement under section 144 read with section 147 of the Act. He submitted that the learned CIT(A) has granted nine opportunities to the assessee, but the assessee has failed to respond to the same. Hence the Ld CIT(A) was also constrained to pass the order ex-parte. He submitted that the assessee was lethargic and was not interested in pursuing income tax matters. Accordingly, the Learned DR strongly opposed to the prayer put forth by learned AR.

4. We heard rival contentions and perused the record. We noticed that the assessee has not appeared before both the Assessing Officer and learned CIT(A). As submitted by Ld D.R, we noticed that the first appellate authority has given opportunity of hearing to the assessee nine times. He has specifically stated that the notices were sent to registered email id of the assessee. However, according to learned AR, the assessee had filed adjournment letters before Ld CIT(A), but they were ignored by him. Be that as it may, from the facts discussed above, we are of the view that the assessee was lethargic in pursuing his matter before the tax authorities.

5. At the same time, we notice that the Ld CIT(A) has not adjudicated the issues on merits. Accordingly, we are of the view that, in the interest of natural justice, the assessee may be provided with a final opportunity to present his case properly before the learned CIT(A). However, since the assessee was not cooperating with the tax authorities, we propose to impose a cost upon the assessee in order to make him understand the seriousness of the income tax proceedings. Accordingly, we impose a cost of Rs. 10,000/- (Rupees Ten Thousand) upon the assessee. We direct the assessee to pay the

above said cost to the credit of income tax department as “other fees” within one month from the date of receipt of this order.

6. Subject to the payment of above cost, which fact shall be verified by the learned CIT(A) during set aside proceedings, the impugned order of Ld CIT(A) is set aside and all the issues contested before us are restored to the file of the learned CIT(A) for adjudicating them afresh on merit, after affording adequate opportunity of being heard to the assessee. We also direct the assessee to fully cooperate with the learned CIT(A) for expeditious disposal of the appeal.

7. In the result, appeal filed by the assessee is treated as allowed for statistical purposes.

Order pronounced on 12.12.2023.

Sd/-
[Justice (Retd.) C.V. Bhadang]
President

Sd/-
(B.R. Baskaran)
Accountant Member

Mumbai.; Dated : 12/12/2023

Copy of the Order forwarded to :

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

//True Copy//

PS

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai