

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

**SHRI AMARJIT SINGH, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 3154/MUM/2023
(Assessment Year: 2012-2013)**

Shalin Star,
DC 5120, 5th Floor, Bharat Diamond,
Bourse Blok G, BKC Road,
Bandra Kurla Complex,
Mumbai - 400051
[PAN: AABFS1914N]

..... **Appellant**

Income Tax Officer,
Ward 19(3)(1), Mumbai,
Income Tax Department,
Piramal Chambers, Lal Baugh,
Parel, Mumbai - 400013

Vs

..... **Respondent**

Appearance

For the Appellant/Assessee : Shri Himanshu Gandhi
For the Respondent/Assessee : Ms. Shreekala Pardeshi

Date

Conclusion of hearing : 28.12.2023
Pronouncement of order : 29.12.2023

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Assessee has challenged the order, dated 17/08/2023, 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 2012-13, whereby the Ld. CIT(A) dismissed the appeal of the Assessee against the Assessment, dated 16/12/2019, passed under Section 143(3) read with Section 147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

2. The Appellant/Assessee has raised following grounds of appeal:

- "1. On the facts and circumstances of the case and law, the Ld. CIT(A) in confirming reassessment order dated passed by Ld. AO without mentioning the DIN Number on order itself which is violation of CBDT Circular No. 19 of 2019 dated 14.08.2019 and in violation of decision of Hon'ble Jurisdictional Bombay High Court in case of Ashok Commercial Enterprises V/s ACIT Writ Petition No. 2595 of 2021.*
- 2. On the facts and circumstances of the case and law, the Ld. CIT(A) erred in passing ex- party order and without adjudicating grounds of appeal on merit.*
- 3. On the facts and circumstances of the case and law, the Ld. CIT(A) erred in confirming reassessment proceeding initiated through notice under section 148 which is bad in law and require to be quashed.*
- 4. On the facts and circumstances of the case and law, the Ld. CIT(A) erred in confirming reassessment proceeding even though the signed copy of reason recorded for reopening was not provided to appellant.*
- 5. On the facts and circumstances of the case and law, the Ld. CIT(A) erred in confirming addition of Rs.3,22,92,654 under section 69C of Income Tax Act, 1961 on account of disputed purchases.*
- 6. On the facts and circumstances of the case and law, the Ld. CIT(A) failed to consider that addition cannot be made without providing opportunity of cross examination and material relied by department.*
- 7. On the facts and circumstances of the case and law, the Ld. CIT(A) erred in confirming rejection of books of account under section 145(3) of Income Tax Act. 1961.*
- 8. On the facts and circumstances of the case and law, the Ld. CIT(A) erred in confirming charging of interest under section 234A and 234B of Income Tax Act, 1961.*

9. *On the facts and circumstances of the case and law, the Ld. CIT(A) erred in invoking penalty provision under section 271(1)(c) of Income Tax Act, 1961.*
 10. *Appellant craves leave to add further grounds or to amend or alter the existing grounds of appeal on or before the date of hearing."*
3. The relevant facts in brief are that the Appellant, a partnership firm, engaged in the business of trading in diamonds, filed return of income for the Assessment Year 2012-13 on 23/08/2012 which was processed under Section 143(1) of the Act. Subsequently, reassessment proceedings were initiated and vide Assessment Order, dated 16/12/2019, passed under Section 143(3) read with Section 147 of the Act an addition of INR 3,22,92,654/- was made in the hands of the Appellant on account of alleged bogus purchases.
 4. The appeal preferred against the Assessment Order, dated 16/12/2019 was dismissed by the CIT(A) vide order, dated 17/08/2023, since the Appellant failed to respond to notice for hearing issued by the CIT(A).
 5. Being aggrieved by the above order passed by the CIT(A), the Appellant is in appeal before us.
 6. The Ld. Authorised Representative for the Appellant appearing before us submitted that the non-compliance of notice of hearing issued by the CIT(A) was on account of communication gap between the Appellant and the Ld. Authorised Representative appearing before us. The Ld. Authorised Representative submitted that he was engaged by the Appellant after the appeal for the Assessment Year

2012-13 was filed before the CIT(A) and was of the belief that the aforesaid appeal would be pursued by the Chartered Accountant filing the said appeal. Whereas, the Appellant was of the belief that the Ld. Authorised Representative appearing before us would be handling the appeal for the Assessment Year 2012-13 pending adjudication before the CIT(A). The Ld. Authorised Representative for the Appellant submitted that the non-compliance of notice of hearing issued by the Appellant was neither deliberate nor intentional and was on account of the aforesaid communication gap. Learned Authorized Representative further submitted that the CIT(A) has decided the appeal summarily without dealing with the stand taken by the Appellant before the Assessing Officer. Thus, the CIT(A) has not adjudicated the appeal on merits.

7. Per contra, Ld. Departmental Representative submitted that despite three notices the Appellant had failed to provide any documents/details to substantiate the claim and therefore, the CIT(A) was correct in dismissing the appeal.
8. We have considered the rival submissions and perused the material on record. We note that the CIT(A) has dismissed the appeal holding as under:

"5 In view of the above, the undersigned is left with no option but to decide the case on the basis of material available on record. Bare perusal of the facts shows that the appellant has not pursued the appeal despite being granted several opportunities as elaborated supra. The appellant has jeopardized his case by not responding despite several opportunities that were provided. Sufficient opportunities were provided to the appellant (vide the Notices referred supra) to come up with the ground-wise written submissions alongwith documentary evidence in support of his contentions raised vide Grounds of Appeal & the Statement of Facts. However, there has been total non- compliance to all the Notices issued. So, his

contentions raised vide Grounds of Appeal & the Statement of Facts cannot be taken on face value. Therefore, the above contentions of the appellant are without merit & are hereby rejected. (Emphasis Supplied)

9. On perusal of above, we find that the CIT(A) has dismissed the appeal holding that the contentions raised by the Appellant in the grounds of appeal and statement of facts were not supported by submissions and documentary evidence without dealing with specific factual and legal grounds raised by the Appellant. Thus, in effect, the CIT(A) has dismissed the appeal for non-prosecution by the Appellant which is contrary to the judgment of the Hon'ble Bombay High Court 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] wherein it has been held 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. On the other hand, the Appellant has also failed to comply with the notice of hearing issued by the CIT(A). However, the Ld. Authorised Representative for the Appellant appearing before us has explained the circumstances and the reason for non-compliance of notice of hearing issued by the CIT(A) which we are inclined to accept. Keeping in view facts and circumstances of the present case, subject to payment of cost of INR 5,000/- to be deposited in the Prime Minister's National Relief Fund or National Disaster Response Fund within seven days of the receipt of this order, we set aside the order, dated 17/08/2023, passed by the CIT(A) and restore the appeal to the file of the CIT(A) for denovo adjudication as per law after granting Appellant sufficient opportunity of being heard. In terms of the aforesaid, Ground No. 2 raised by the Appellant is allowed for statistical purposes while all

the other grounds/contentions raised by the Appellant are dismissed as being infructuous at this stage.

10. In result, the present appeal is allowed for statistical purposes.

Order pronounced on 29.12.2023.

Sd/-
(Amarjit Singh)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 29.12.2023
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