

IN THE INCOME TAX APPELLATE TRIBUNAL

"C" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.2574/Mum./2023

(Assessment Year : 2010-11)

Parasmal Bheraram Solanki
Bhairav Pro. Stores
Balvanta Jagdev Chawl
Gaondevi Road, Bhandup (West)
Mumbai 400 075 PAN – AVUPS1798L

..... Appellant

v/s

Income Tax Officer
Ward-29(2)(5), Mumbai

..... Respondent

Assessee by : Shri Chintan Shah

Revenue by : Shri H.M. Bhatt

Date of Hearing – 20/03/2024

Date of Order – 05/04/2024

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 30/04/2023 passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [*"learned CIT(A)"*], for the assessment year 2011-12.

2. In the interest of justice, the slight delay of 23 days in filing the present appeal is condoned.

3. In this appeal, the assessee has raised the following grounds:-

"Ground 1: Want of Natural Justice

1. On the facts and in the circumstances of the case and in law, the National Faceless Appeal Centre (NFAC") erred in upholding the order passed by Income Tax Officer ("TO") without giving reasonable opportunity of hearing to the Appellant and thereby violating the principles of natural justice.

2. The Appellant prays that the order passed by the 110 be struck down as bad in law.

WITHOUT PREJUDICE TO GROUND NO. I:

Ground II: Reopening of assessment bad in law

1. On the facts and circumstances of the case and in law, the NFAC erred in confirming the action of the ITO in reopening the assessment under section 147 of the Income Tax Act 1961 ('the Act')

2. The Appellate prays that reopening of assessment under section 147 of the Act is void ab-initio and/or otherwise bad-in-law."

4. During the hearing, the learned Authorised Representative ("learned AR"), at the outset, submitted that the learned CIT(A) vide impugned order dismissed the appeal filed by the assessee ex-parte without giving reasonable opportunity of hearing to the assessee. The learned AR submitted that on 18/04/2023 the learned CIT(A) issued a notice directing the assessee to file written submissions on or before 26/04/2023 in support of the grounds of appeal raised by the assessee along with the documentary evidence. In response thereto, on 25/04/2023 the assessee filed an application seeking adjournment till 11/05/2023 to compile the details as required. It is submitted that however on 30/04/2023 the learned CIT(A) dismissed the appeal filed by the assessee and upheld the addition made by the Assessing Officer. In this regard, the learned AR furnished the screenshot from the website of NFAC as proof of the aforesaid adjournment request.

5. Having considered the submissions of both sides and perused the material available on record, we find that the learned CIT(A) though issued a notice to the assessee to file the written submission in support of the grounds raised in the appeal along with the supporting documentary evidence, however without waiting for receipt of aforesaid documents dismissed the appeal filed by the assessee. From the perusal of the impugned order, it is also evident that there is no mention of the aforesaid notice issued by the learned CIT(A) on 18/04/2023 or the adjournment sought by the assessee on 25/04/2023 and has merely stated that the assessee has not responded to the notices of hearing and preferred not to furnish any further details in support of his stand and the arguments. Thus, it is sufficiently evident that this is not a case wherein the learned CIT(A) after rejecting the adjournment request of the assessee proceeded to decide the appeal ex-parte. Rather, in the present case, the learned CIT(A) completely overlooked the adjournment request of the assessee. It is further evident from the record that even during the assessment proceedings, the assessee failed to comply with the notices issued by the Assessing Officer and accordingly the assessment was completed under section 144 of the Act on the basis of material available on record. Therefore, in view of the facts and circumstances of the case as noted above, we deem it appropriate to set aside the impugned order as the same has been passed in violation of the principles of natural justice. Further, in the interest of justice, we grant one more opportunity to the assessee to submit all the details in support of its claim before the jurisdictional Assessing Officer, who shall, after considering the details as submitted by the assessee, pass an order afresh. We order accordingly. As the matter is being restored to

the jurisdictional Assessing Officer for *de novo* adjudication, the other grievances raised by the assessee in the present appeal do not call for adjudication at this stage. Accordingly, grounds raised by the assessee are allowed for statistical purposes.

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

Order pronounced in the open Court on 05/04/2024

Sd/-
PRASHANT MAHARISHI
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 05/04/2024

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai