

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH “C”, MUMBAI
BEFORE SHRI. PRASHANT MAHARSHI, ACCOUNTANT
MEMBER
AND
SHRI. RAJ KUMAR CHAUHAN, JUDICIAL MEMBER

ITA NO. 3942/MUM/2023 (A.Y: 2016-17)

Chirag Jayantilal Bilakhia Vs. Income Tax Officer -19(1)(3),
B-1803, Magnum Tower, Dr. S. S. Matru Mandir, Tardeo Road,
Rao Road, Lalbaug, Mumbai – Mumbai – 400007.
Mumbai 400012.
PAN: ACEPB1247Q

(Appellant)

(Respondent)

Assessee Represented by	:	Ms. Vinita Shah
Department Represented by	:	Shri. H. M. Bhatt (Sr. D.R.)
Date of conclusion of Hearing	:	15.04.2024
Date of Pronouncement	:	24.04.2024

ORDER

PER RAJ KUMAR CHAUHAN (J.M.):

1. The assessee/ appellant has instituted the present appeal for the A. Y. 2016-2017 under Section 253 of the Income Tax Act, 1961, challenging the order of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [hereinafter referred to as the “Ld. CIT(A)”], passed under section 250 of the Income Tax Act, 1961 [hereinafter referred to as “the Act”] alleging that he has filed the Return of Income on 25.03.2017 declaring Nil/- income.
2. The brief facts giving rise to the present appeal are as under:-

3. The Ld. Assessing Officer, Ward 19(1)(3), Mumbai (hereinafter referred to as the "AO") has passed the best judgment Assessment Order u/s. 144 of the Act. It becomes evident from the said assessment order that the return of income was filed on 25.03.2017 declaring Nil/- income. Subsequently, the case was selected for limited scrutiny under the category CASS. Thereafter, the notice u/s. 143(2) of the Act was issued via e-proceedings on 18.09.2017 and allegedly served to the assessee; thereafter, the notices u/s. 142(1) dated 01.08.2018, 21.09.2018, 09.10.2018, 20.10.2018, 08.12.2018 alongwith questionnaire issued via e-proceedings were also served upon the assessee. However, no details has been filed by the assessee on e-proceedings. It is further stated that a show cause letter dated 13.12.2018 was issued via e-proceedings to the assessee giving a final opportunity for compliance by 17.12.2018 as to why an amount of 0.5% of entire securities transaction reported in assessee's AIR should not be added to his total income and his claim of loss on these transaction in return will not be disallowed and ex-parte order should not be passed under the provisions of the Section 144 of the Act in the absence of any details filed by him. However, again no response was filed by the assessee/ appellant to the show cause notice. Accordingly, penalty proceedings u/s. 271(1)(b) was initiated for non-compliance of

the notice u/s. 142(1) of the Act. The Ld. AO has computed the total income of the assessee as under:

<i>SN</i>	<i>Particulars</i>	<i>Amount in Rs.</i>
1.	<i>Total Income as per ROI</i>	<i>NIL/-</i>
2.	<i>Add: 0.5% of 428,67,39,603/-</i>	<i>2,14,33,698/-</i>
3.	<i>Total Taxable Income</i>	<i>2,14,33,698/-</i>
4.	<i>Income rounded off u/s. 288A of the I.T. Act.</i>	<i>2,14,33,700/-</i>

4. Hence, an amount of Rs. 2,14,33,698/- @ 0.5% of total transaction of Rs. 428,67,39,603/- was added to the total income of the assessee on account of concealment of income chargeable to tax.
5. The said assessment order was challenged by the Appellant before the Ld. CIT(A) who while passing an order u/s. 250 of the Income Tax Act, 1961, has dismissed the appeal on merit on ground no. 1 and 2 and the appeal of the assessee was partially allowed with respect to the ground no. 3 taken by the assessee/ appellant before the Ld. CIT(A). According to the Ld. CIT(A) with respect to the ground no. 1, 2 and 3 are reproduced as mentioned in para 7 is as under:

“7.0. Ground no. 1 is relating to passing of ex-parte order by the AO u/s. 144 of the Act without giving proper opportunity of being heard. As seen from the assessment order, AO has sent five notices u/s. 142(1) of the Act along with questionnaire subsequent to notice u/s. 143(2) of the Act. Final opportunity was given with a show cause notice on 13.12.2018 seeking

compliance by 17.12.2018 wherein the appellant was asked to show cause as to why an amount of 0.5% of the turnover should not be treated as income of the appellant. As the appellant did not respond to any of the notices, the AO was constrained to pass the ex-parte order. The appellant did not see the e-notices sent to the given e-mail address cannot be the reason that the AO has not given sufficient opportunities to the appellant. I am satisfied with the number of notices and questionnaire issued by the AO which can be fairly held to be sufficient opportunity of being heard which the appellant has not utilized. Accordingly, the ex-parte order passed by the AO after giving show cause notice is as per the provisions of the Act and hence, upheld. Ground No. 1 is dismissed.

- 7.1. Ground No. 2 is relating to addition of 0.5% on the turnover of security transactions reported in AIR. The appellant did not produce any details relating to his securities transactions before the AO or even during the appellate proceedings. In absence of any details, I am of the opinion that 0.5% of the total securities turnover of Rs. 428.67 crores amounting to Rs. 2,14,33,698/- as income of the appellant is upheld without there being any contrary evidences and submissions from the appellant's side. Ground No. 2 is dismissed.
- 7.2. Ground No. 3 is relating to not reducing the income assessed of Rs. 2,14,33,698/- from the loss returned of Rs. 2,40,01,216/-. According to the appellant, he had returned a loss of Rs. 2,40,01,216/- in the return filed but the Ld. AO treated the income of the Appellant at NIL in the computation. The Ld. AO is directed to examine the claim of the Appellant. If the claim of the Appellant that he returned a loss of Rs. 2,40,01,216/- be set off against the said loss. With this direction, the ground no. 3 is treated to have been partly allowed.
- 7.3. Ground No. 4 is general in nature hence not adjudicated.”

6. Aggrieved by the said order of the Ld. CIT(A), the present appeal has been filed on the following grounds :-

- a. *“That the Ld. CIT(A) as well as the Ld. AO has erred in passing the ex-parte order, without granting sufficient opportunity of being heard to the appellant.*
 - b. *The Ld. CIT(A) has erred in confirming the action of Ld. Assessing officer in making an addition of Rs. 2,14,33,698/- being 0.5 percent of entire securities transaction of Rs. 4,28,67,39,603/- as reported in AIR, without considering the facts and circumstances of the case.”*
7. It is evident from the observation of the Ld. CIT(A) in para 7 and 7.1 that the Ld. CIT(A) has decided the appeal on merit because in para 4.2 of the impugned order, it was observed that the appellant has not filed Written Submissions in response to the notice issued u/s. 250 of the Act. It is a matter of regret that the appellant has not chosen to avail the multiple opportunities of natural justice given. The appellant is not keen to pursue its appeal.
8. In support of his ground of Appeal, the assessee had filed an Affidavit dated 12.04.2024 categorically stating that,
- a) *“My income tax return for A.Y. 2016-17 was selected for scrutiny. However, I did not receive any physical notice from the department except for the assessment order along with notice of demand. All the notices were delivered except for the assessment order along with notice of demand. All the notices were delivered electronically on my email which I couldn't check as I was not in the right state of mind.*
 - b) *After consultation with my earlier CA, M/s. K. Kaveria & Co., I had preferred an appeal against the said ex-parte assessment order.*

c) *At the time of filing of appeal, my earlier CA had mistakenly provided their own email id i.e., kkaveriaintimation@gmail.com for the purpose of communication.*

d) *All the notices pertaining to my CIT Appeal was delivered on email id of my earlier CA i.e., kkaveriaintimation@gmail.com which I was not knowing and hence, my current CA i.e., M/s. Shah & Taparia couldn't submit any response to the said notices.*

e) *I neither intended to not comply with the proceedings nor providing any disrespect to the framework of Income Tax Department.”*

9. We have heard the Ld. AR of on behalf of the Appellant/assessee who would argue that the principal of natural justice has neither been followed neither by the Ld. AO nor by the Ld. CIT(A) which has resulted into gross miscarriage of justice to the appellant/assessee. It is further argued that no notice allegedly issued via e-process has ever been received by the appellant/assessee and in that regard he has already filed his affidavit categorically stating the facts and circumstances in which he has not received any notice/show cause notice issued by the Ld. AO. It is further argued that the order passed by the Ld. AO u/s. 144 and the order passed by the Ld. CIT(A) u/s. 250 of the Income Tax Act, 1961 are therefore, bad in law and needs to be set aside. The Ld. AR on behalf of the assessee further submits that the appellant may be given opportunity to present this case before the

Ld. AO to being heard by presenting this case that of filing documents and making submissions accordingly.

10. The Ld. DR on behalf of revenue has argued that the Ld. AO has passed the impugned assessment order after following due process of law and has served various notices including show cause notice to the appellant/assessee and it is the appellant who is at fault in not availing the opportunity given to him by the Ld. AO and therefore, the Ld. AO was left with no option but to pass the best judgment assessment order u/s. 144 of the Act. It is further argued that the assessee/appellant has even failed to represent its case before the Ld. CIT(A) as neither any Written Arguments is filed nor the assessee has appeared to get his case argued before the Ld. CIT(A) and the Ld. CIT(A) has rightly passed the order on merit after assessing the facts, circumstances and material on record. It is therefore argued that there is no illegality or perversity in the order passed by the Ld. AO as well as by the Ld. CIT(A) as it is the appellant who has chosen not to put forth his case before the Ld. AO.

11. We have considered the submissions of Ld. AR as well as the Ld. DR on behalf of the Appellant and the Revenue. Right to be heard before passing of any adverse order against an individual is an indefeasible right having been recognized by various institutions

which is governed by rule of law and has to follow the principal of natural justice which includes quasi judicial authority also.

12.The appellant has filed an affidavit giving detail of facts and circumstances stating that he has never received any notice allegedly issued by the Ld. AO before passing the best judgment assessment order dated 24.12.2018. No material has been brought on record by the revenue authorities which may show that the affidavit filed by the appellant is false. Therefore, we have no reason to disbelieve the affidavit and its contents. We are satisfied that the appellant has not been afforded effective hearing before passing the impugned assessment order by the Ld. AO u/s. 144 of the Act. The Ld. CIT(A) has also failed to appreciate this fact and has thus not considered the facts and circumstances alleged by the assessee in Appeal before the Ld. CIT(A) and thus, the order of the Ld. CIT(A) is also not legally sustainable in the eyes of law because the Ld. CIT(A) has failed to appreciate that the best judgment assessment order has been passed by the Ld. AO without following the principal of natural justice thus denying the indefeasible right of the assessee.

13.For the above reasons, the appeal before us is allowed with the direction that the matter is restored to the file of Ld. AO to pass a fresh order after giving effective opportunity to the

assessee/appellant for presenting his case and submitting the necessary documents.

14. The directions given by the Ld. CIT(A) with respect to the ground no. 3 in the appeal before the Ld. CIT(A) shall also be considered and disposed off by the Ld. AO as directed by Ld. CIT(A).

15. In the result, appeal filed by the assessee is allowed in above terms.

Order pronounced in the open court on 24th April, 2024.

Sd/-
(PRASHANT MAHARSHI)
ACCOUNTANT MEMBER

Sd/-
(RAJ KUMAR CHAUHAN)
JUDICIAL MEMBER

Mumbai / Dated 24.04.2024
Karishma Pawar (Stenographer)

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mumbai