

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

**SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 4213/MUM/2023
(Assessment Year: 2016-17)**

Jayant Metal Mfg Co. Pvt. Ltd.,
16, Sayani Road, Mumbai – 400025
[PAN: AAACJ1152B]

..... **Appellant**

Deputy Commissioner of Income Tax,
Circle 6(1)(2), Mumbai,
Aayakar Bhavan, Maharishi Karve Road,
Mumbai - 400020

Vs

..... **Respondent**

Appearance

For the Appellant/Assessee : Shri Ketan Vajani
For the Respondent/Department : Ms. Rajeshwari Menon

Date

Conclusion of hearing : 25.04.2024
Pronouncement of order : 29.04.2024

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Revenue has challenged the order, dated 05/10/2023, passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [hereinafter referred to as 'the CIT(A)'] for the Assessment Year 2016-17, whereby the Ld. CIT(A) had dismissed the appeal of the Assessee against the Penalty Order dated 19/09/2022, passed under Section 271(1)(c) 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 under the circumstances of the case and in law the Ld. Commissioner of Income Tax (Appeals) has erred in confirming the penalty of Rs. 41,37,376/- levied by the Id. AO under section 271(1)(c) of the Act without accepting the explanation of the appellant. He ought to

have deleted the penalty levied by the Id. A.O.

- 2. On the facts and under the circumstances of the case and in law the Ld. Commissioner of Income Tax (Appeals) has erred in confirming the penalty ignoring the fact that the impugned penalty order was passed in gross violation of principle of natural justice as no personal hearing was allowed either by the Id. A.O. or by the Ld. Commissioner of Income Tax (Appeals) despite request being made by the Appellant.*

3. The Appellant craves leave to alter, amend, modify or substitute any ground/grounds and to add any new ground or grounds on or before the appeal is disposed off."
3. The relevant facts in brief are that Appellant-company did not have any business activity for last many several years due to deadlock in management arising from disputes between the two shareholder directors. For many years the Appellant-company did not file return of income. However, the income from Assessment Year 2011-12 to Assessment Year 2014-15 was declared under Income Declaration Scheme (IDS), 2016 and taxes were paid accordingly.
4. It was stated that for the previous year relevant to the Assessment Year 2016-17, the Appellant-company had earned interest income. No return of income was filed by the Appellant-company for the relevant assessment year and assessment under Section 143(3) read with Section 147 of the Act was completed on the basis of interest of INR 1,25,16,636/- reflected in Form 26AS. Penalty proceedings were also initiated/directed under Section 271(1)(c) of the Act. Subsequently, penalty under Section 271(1)(c) of the Act was levied on the Appellant vide order, dated 19/09/2022. The Appellant preferred appeal before CIT(A) challenging levy of penalty. Vide order dated 05/10/2023, the CIT(A) dismissed the appeal. Therefore, the Appellant is now

in appeal before us against the order of CIT(A) on the grounds reproduced in paragraph 2 above.

5. When the appeal was taken up for hearing, the Ld. Authorised Representative for the Appellant advanced submission on Ground No. 2 raised in the present appeal and submitted that the order passed by the CIT(A) was bad in law as personal hearing was not granted to the Appellant by the CIT(A) despite specific request. It was submitted that in the present case where there was deadlock in the management, the Appellant should have been granted to explain the prevailing circumstances and make out a case for non-levy of penalty in personal hearing. It was submitted that in any case, once request for personal hearing was made the CIT(A) was required to grant the same. Per contra, the Learned Departmental Representative submitted that the Appellant has not been prejudiced and the CIT(A) has passed the order after taking into consideration the submission filed before the CIT(A). Therefore, the Ground No. 2 raised by the Appellant should be rejected.

6. We have considered the rival submissions recorded hereinabove and perused the material on record. The averments made by the Appellant regarding the subsisting dispute between the shareholder-directors of the Appellant-company stands corroborated by the orders passed the Hon'ble Bombay High Court placed at 30 to 38 of the paper-book 2 filed by the Appellant. Further, the copy of the letters/submissions dated 09/03/2022, 10/08/2022 and 04/09/2023 [*placed at page 3 to 14 of paper-book 1*] show that the Appellant had requested for opportunity of being heard and personal hearing from CIT(A). Admittedly, no personal hearing was granted to the Appellant. Under Rule 12 of the applicable Faceless Assessment Scheme,

2021 personal hearing is to be granted in case so requested by the Appellant. We note that the CIT(A) has failed to grant personal hearing despite specific request having been made by the Appellant. Accordingly, the order dated 01/11/2023, passed by the CIT(A) is set aside with the directions to the CIT(A) to decide the appeal afresh after granting the Appellant personal hearing as per law. Thus, Ground No. 2 raised by the Appellant is allowed while Ground No. 1 and 3 are dismissed as being infructuous.

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

Order pronounced on 29.04.2024.

Sd/-
(Om Prakash Kant)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 29.04.2024
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