

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

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
SMT. RENU JAUHARI, ACCOUNTANT MEMBER**

**ITA No.3293/M/2023
Assessment Year: 2012-13**

Mr. Sajjan Kedia, 1004, K Palam Court, Malad Link, Malad West, Maharashtra- 400064 PAN: AENPK7771D	Vs.	Income Tax Officer, Ward 30(3)(4), 6 th Floor, C-13, Pratyakshakar Bhavan, BKC, Bandra East, Maharashtra-400 051
(Appellant)		(Respondent)

Present for:

Assessee by : None
Revenue by : Shri Himanshu Kumar, D.R.

Date of Hearing : 16 . 05 . 2024
Date of Pronouncement : 30 . 05 . 2024

O R D E R

Per : Narender Kumar Choudhry, Judicial Member:

This appeal has been preferred by the assessee against the order dated 17.07.2023, impugned herein, passed by the National Faceless Appeal Center (NFAC)/ Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) under section 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2012-13.

2. In the instant case, the case of the assessee was reopened under section 147 of the Act which resulted into passing the assessment order dated 28.12.2017, whereby the additions of Rs.39,06,871/- and Rs.1,95,343/- respectively under section 68 & 69C of the Act were made, against which the assessee preferred first appeal before the Ld. Commissioner who, though issued 8 notices to the assessee, however, the assessee except requesting the adjournment on two occasions, made no response and therefore in the constrained circumstances, the Ld. Commissioner decided the appeal of the assessee as ex-parte and affirmed the additions by dismissing the appeal.

3. The assessee, being aggrieved, is in appeal before us.

4. Though the notice for the date of hearing on today was issued to the assessee through RPAD as well as email, however, the assessee neither appeared nor filed any adjournment application, hence considering the peculiar facts and circumstances of this case, as the order passed by the Ld. Commissioner is an ex-parte order, hence we are inclined to decide this appeal by perusing the orders passed by the authorities below and hearing the Ld. D.R.

5. The Ld. D.R. supported the orders passed by the authorities below.

6. We have considered the orders passed by the authorities below specifically the impugned order. As we have observed above that in spite of giving notices and/or opportunity of being heard to the assessee, he except seeking adjournments, made no response and therefore in the constrained circumstances, the Ld. Commissioner decided the appeal as ex-parte whereby the additions have been affirmed. It is apparent from the impugned order that there are negligence and laches on the part of the assessee, who in spite of giving opportunities made no compliance and therefore the assessee does not deserve any leniency, however, considering the peculiar facts and circumstances specific to the effects that in the absence of relevant reply/documents, the first appeal filed by the assessee remained to be unadjudicated on merits and therefore, for just decision of the case and for substantial justice, we are inclined to set aside the impugned order and consequently remanding the case to the file of the Ld. Commissioner for decision on merits, however, subject to deposit of Rs.2,000/- in the Prime Minister's Relief Fund (PMRF) within 15 days of the receipt of the order.

7. We also direct the assessee to cooperate with the appellate proceedings and to file the relevant submissions/documents which would be essential and required by the Ld. Commissioner for proper adjudication of the case. We clarify that in case of further default the assessee shall not be entitled for any leniency. Hence, the case is remanded accordingly.

8. In the result, the appeal filed by the assessee stands allowed for statistical purposes.

Order pronounced in the open court on 30.05.2024.

**Sd/-
(RENU JAUHARI)
ACCOUNTANT MEMBER**

**Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER**

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.