

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'D' BENCH  
MUMBAI**

**BEFORE: SHRI PRASHANT MAHARISHI, ACCOUNTANT  
MEMBER**

**&**

**SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER**

**ITA No. 2900/MUM/2023  
(Assessment Year : 2011-12)**

Mohamed Imran Mohamed Siddique Khan 17/4B Wing Gulistan CHS, CST Road, Kapadia Nagar, Kurla West, Mumbai-400070	Vs.	ITO Ward 26(2)(3) Mumbai C-10/402 BKC, Mumbai-400051.
<b>PAN/GIR No. BJJP4618M</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Mr. Amit V. Karme (Adv.)
Revenue by	Smt. Mahita Nair (Sr.DR.)
<b>Date of Hearing</b>	<b>16/05/2024</b>
<b>Date of Pronouncement</b>	<b>06/06/2024</b>

**आदेश / O R D E R**

**PER SUNIL KUMAR SINGH (J.M):**

1. This appeal has been preferred against the impugned order dated 16.06.2023 passed by the Ld. Commissioner of Income-tax(Appeals), National Faceless Appeal Centre(NFAC) [hereinafter referred to as the "CIT(A)"] u/s. 250 of the

Income-tax Act, 1961 [hereinafter referred to as "Act"] for the relevant Assessment year [A.Y.] 2011-12, wherein learned CIT(A) has upheld the addition of Rs. 90,10,750/- made by Assessing Officer vide assessment order dated 21.12.2018.

2. The brief fact related to the appeal state that the assessee filed the return of income for A. Y. 2011-12 on 15.02.2012, declaring total income of Rs. 4,98,020/-. The return was processed u/s.143(1) of the Act. An information was received from DDIT(Inv.), unit 5(4), Mumbai, Vide letter DDIT(Inv.) /Unit(4)/Information/2017-18 dated 02.03.2018 regarding the high value clearing and transfer made in the bank account number 910020023319581 of the Axis bank of the assessee during F.Y 2010-11 and F.Y 11-12. It was also observed by the assessing officer that the assessee made cash deposits and withdrawal. During F.Y 2010-11, the assessee made cash deposit of Rs. 7,99,400/- and cheque deposit of Rs. 81,74,075/-. Thereafter the case was reopened u/s.147 of the Act. Notice u/s. 148 of the Act was issued to assessee but returned with remarks "not known". Summoned u/s. 131 of the Act was also unserved at the given address of the assessee. The income shown by the assessee did not commensurate with the credits made in the above bank account during the F.Y 2010-11. The Assessing Officer found the escapement of income to the extent of Rs. 89,73,475/- (799400+8174075) for A.Y. 2011-12. Subsequently, notice u/s. 142 of the Act dated 12.07.2018 and 15.11.2018 were issued but returned with the endorsement as "not known". Assessee did not respond to the notice u/s. 133(6) dated

22.11.2018. In view of the repeated non compliance by assessee, penalty proceedings u/s. 274 r.w.s 271 of the Act were initiated separately. Assessing Officer issued show cause notice u/s. 144 of the Act dated 26.11.2018 for computing the assessment on the principle of best judgment assessment. The cash deposit and cheque deposit amounts were treated as cash credit u/s. 68 of the Act and were added to the total income of the assessee. Accordingly, total income was arrived at (Rs. 4,98,020+9010175= 9508195). Penalty proceedings u/s. 271(1)(C) for concealment of income and penalty proceeding u/s. 271F for failing the file return were also initiated separately.

3. Aggrieved by the assessment order, assessee preferred appeal before learned CIT(A), however assessee did not respond to the notices issued by the first appellate authority. Learned CIT(A) dismissed assessee's appeal for non prosecution.
4. The appellant assessee has approached this tribunal on the following grounds:

**"1. Ground No. 1-Reopening of Assessment under Section 147:**

*1.1 On the facts and in the circumstances of the case and in law, the learned Assessing Officer ('AO') erred in reopening the assessment proceedings under Section 147 of the Income Tax Act, 1961 and further that the learned CIT(A) erred in dismissing the appeal filed by the Appellant.*

*The Appellant most humbly prays that the impugned reassessment proceedings under Section 147 be declared as bad in law and should be annulled.*

**2. Ground No. 2-Ex Parte Order under Section 144 r.w.s. 147:**

*On the facts and in the circumstances of the case and in law, the learned AO erred in passing an ex parte order under Section 144 read with Section 147 in violation of the principles of natural justice, in as much as that:*

*a The appellant was not given proper and reasonable opportunity to represent the case.*

*b. Notices were not duly delivered to the appellant, and thus, he had no knowledge of the proceedings.*

*The Appellant most humbly prays that the impugned order under Section 144 read with Section 147 should be set aside*

**3. Ground No. 3. Addition under Section 68 of the Income Tax Act:**

*On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in upholding the addition of Rs 90,10,750/- made by the Learned AO under Section 68 of the Income Tax Act, notwithstanding the fact that the Appellant had duly explained the impugned receipts and their source, in as much as that:*

*a. The appellant had duly disclosed the Long Term Capital Gain of Rs.20,00,000/- and claimed deduction under Section 54 of the Act.*

*b. The appellant received a gift of Rs.40,00,000/- from his mother through account payee cheques, which is exempt from tax*

*c. The appellant disclosed turnover from business amounting to Rs.33,75,478/- in the return of income.*

*The Appellant most humbly prays that the additions made by the learned AO be deleted.....”*

5. In response to the issuance of notice by this tribunal, learned DR appeared and participated in the proceedings.

6. We have perused the material on record and heard learned representative for both the parties.

7. Learned representative for the assessee has submitted that both the authorities have passed ex-parte orders. The assessee had no knowledge of the proceedings. Hence, the reassessment proceedings are bad in law.

8. Learned DR has stated that despite ample opportunities, assessee did neither appear nor filed any response to the various notices issued by the authorities below. She has supported the impugned order.

9. Considering the submissions made before us, it appears that the assessee did neither appear nor respond to any notices issued by the authorities below. The principles of natural justice does not seem to have been complied in substance. In such circumstances, it deems just and proper to remit the matter back to the file of learned CIT(A) for de novo adjudication on merits. Appellant assessee is directed to be diligent and cooperative in attending the hearings and make the submissions before the first appellate authority so that the appeal can be disposed of expeditiously and effectively. Assessee may not seek adjournments but for compelling reasons. It is clarified that we have not made any observations on the merits of the case. The impugned ex-parte order is set aside. The appeal is liable to be partly allowed.

10. The appeal is partly allowed in above terms. The impugned order dated 16.06.2023 is set aside.

Order pronounced on 06.06. 2024.

**Sd/-**  
**(PRASHANT MAHARISHI)**  
**ACCOUNTANT MEMBER**

Mumbai; Dated 06/06/2024  
Anandi Nambi, *Steno*

**Sd/-**  
**(SUNIL KUMAR SINGH)**  
**JUDICIAL MEMBER**

**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**