

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

**BEFORE: SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER  
&  
SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER**

**ITA No. 4451/MUM/2023  
(Assessment Year : 2015-16)**

Mitesh Rameshbhai Patel 33/A, Joy Pragati, Tarun Bharat Society, Near Nagpal Hotel, J.B. Nagar, Chakala, Andheri, Mumbai-400059	Vs.	Commissioner of Income-tax(Appeal) Pratayksha Kar Bhavan, BKC Mumbai, Mumbai-400051
<b>PAN/GIR No. AKPPP7433F</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri. Ahmad F. Jahangir
Revenue by	Smt. Mahita Nair (SR. DR.)
<b>Date of Hearing</b>	<b>07/05/2024</b>
<b>Date of Pronouncement</b>	<b>21/06/2024</b>

**आदेश / O R D E R**

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

1. This appeal has been preferred against the impugned order dated 11.10.2023 passed in Appeal no. CIT(A), Mumbai-44/10334/2017-18 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 Assessment year [A.Y.] 2015-16, wherein learned CIT(A) has confirmed the addition of Rs. 51,46,606/- made by the Assessing Officer in the income of the assessee vide assessment order dated 11.12.2017.

2. The brief facts speak that the assessee has e-filed return of his income for A.Y. 2015-16, declaring total income of Rs. 25,02,930/- the same was processed u/s. 143(1) of the Act. The assessee's case was selected for scrutiny under CASS. Statutory notices u/s. 143(2) and 142(1) of the Act were issued and served upon the assessee. Assessee responded to the notices and filed various details called for. Assessing Officer noticed from the Annual Information Report (AIR) that the assessee received total contractual receipts and professional services to the extent of Rs. 51,46,606/- and the same was not offered to taxation in the P&L A/c. In this regard the show cause notice dated 30.11.2017 was issued upon the assessee but the assessee did not respond. Therefore, the Assessing Officer brought the aforesaid amount to tax and the same was added in the total income of the assessee. Penalty proceedings u/s. 271(1)(C) of the Act were also initiated separately for

furnishing inaccurate particulars of income and concealment of income. Aggrieved by the assessment order, assessee preferred an appeal before learned CIT(A), who confirmed the aforesaid addition made by the AO in the total income of the assessee, vide assessment order dated 11.12.2017.

3. The appellant assessee has approached this tribunal on the following grounds:

*"1. The order of the Ld. CIT(A) is bad in law and on facts*

*2. On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in passing the ex-parte order, without granting a sufficient opportunity of being heard to the appellant*

*2.1 The Ld. CIT (A) also failed to ensure the Service of Notices issued as in para 5.1 & 5.2 of the CIT(A) order the Ld. CIT (A) has mentioned regarding issuance of notice only and nothing is mention regarding the Service/Receipt of Notice by the appellant.*

*2.2 Since the notice was not served in the Regular Mail Box (other than "SPAM/JUNK box) of the Assessee, the Assessee was prevented from responding to notice of hearing.*

*2.3 Further the Ld. CIT (A) a passed the ex-parte order without any service of Notice of hearing physically at address of assessee either.*

*3. In the facts and circumstances of the case, the only issue in the said appeal is an addition made by the Ld. AO Rs. 51.46 lac based on AIR information, in context to which the appellant claims that the said Income is already included in the Total Turnover of Rs. 8.44 Crs reported by the appellant. Therefore, Action of Ld. AO/Ld. CIT Appeal tantamount to double taxation.*

*3.1 The order of the Ld. CIT A is contrary to the observation drawn in para 6 of the First Appellant order i.e.... in all probability the receipt of Rs. 51.46 lac might have been included in the above turnover.*

*3.2 Hence it is prayed to Restore / Reinitiate the appeal with CIT Appeal for fresh proceedings.*

4 *Without prejudice to the above, in the facts and circumstances of the case the Assessee is also ready to co-operate and provide all the assistance, if your honour wishes to verify the facts / claim of the Assessee of having reported/included the addition amount in the sales/income reported in FY 2014-15 from the AO and Subsequently based on the said verification report suitable relief may be granted by your honour....."*

4. In response to the notice issued by the tribunal, learned DR appeared and participated in the proceedings.
5. We have perused the records and heard learned representative for both the parties.
6. Learned representative for the assessee has submitted that the addition of Rs. 51.46 lacs based on AIR information was already included by the assessee in the total turnover of Rs. 8.44 crores. Learned CIT(A) has passed ex-parte order ignoring the merits of the case and without affording an opportunity of hearing to the assessee. Further, submitting that the impugned order be set aside.
7. Learned DR has supported the impugned order.
8. It transpires from the perusal of the impugned order that the appellant assessee, did either ignore the notices or sought adjournments on some of the occasions before the first appellate authority. Learned CIT(A) has in para 6 of the impugned order, mentioned that since the appellant, himself is not vigilant, no relief can be granted to the appellant. Learned CIT(A) while dismissing the appeal, has not discussed the merits of the case, whereas, it was required to state the points for determination, the decision there on and the reasons for the decision as provided u/s.

250(6) of the Act. We are conscious of the fact that the assessee has not responded before the first appellate authority in response to the various notices issued by it. However, in the interest of justice and fair play, we find it appropriate to remit the matter back to the file of learned CIT(A) for denovo adjudication on merit. We further direct the assessee to be diligent and cooperative in attending the hearings and making submissions before the first appellate authority for the expeditious and effective disposal of the appeal. Assessee should refrain from seeking any adjournment but for compelling and unavoidable circumstances to be examined by learned CIT(A). Needless to say that learned CIT(A) shall ensure the observance of the principles of natural justice. It is made clear that we have not made any observation on the merits of the case. The appeal is thus liable to be allowed.

9. In the result, the appeal is allowed in above terms. The impugned order dated 11.10.2023 is set aside. The appeal is restored back to the file of the learned CIT(A) for statistical purposes.

Order pronounced on 21.06.2024.

**Sd/-**  
**(GIRISH AGRAWAL)**  
**ACCOUNTANT MEMBER**  
Mumbai; Dated 21/06/2024  
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**