

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

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI SUNIL KUMAR SINGH (JUDICIAL MEMBER)**

**ITA No. 1887/MUM/2024
Assessment Year: 2017-18**

Yudhishtir Dilip Khatau,
Flat No. 1, 1st & 2nd Floor, Haveli,
L.D. Ruparel Marg, Malabar Hill,
Mumbai-400006.

PAN NO. AAHPK 2447 A
Appellant

CIT(A), National Faceless Appeal
Centre, Circle 5(3)(1),
Vs. Aayakar Bhawan,
Mumbai-400020.

Respondent

Assessee by : Mr. Nitesh Joshi
Revenue by : Ms. Rajeshwari Menon, Sr. DR

Date of Hearing : 01/07/2024
Date of pronouncement : 02/07/2024

ORDER

PER OM PRAKASH KANT, AM

This appeal by the assessee is directed against order 08.03.2024 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment year 2017-18, raising following grounds:

- 1. The learned CIT(A) erred in dismissing the appeal in limine for non-prosecution.*
- 2. The learned CIT(A) erred in upholding the assessment order without considering the grounds of appeal raised by the appellant.*



3. *The learned CIT(A) erred in upholding the assessment order without considering the materials/ evidence available on records as part of assessment records and without calling for the same from the Assessing Officer.*
4. *The learned CIT(A) erred in issuing 4 notices over a period of only 24 days (about 3 and a half weeks) without giving sufficient time to the appellant to respond to the notice. The learned CIT(A) further erred in completing the appeal proceedings in a hasty manner.*
5. *The learned CIT(A) erred in dismissing the appeal in a summary manner without specifically disposing off or discussing the grounds and facts put forth by the appellant in the petition.*
6. *The learned CIT(A) erred in upholding the assessment proceedings which were initiated based on incorrect information and which did not pertain to the appellant, without discussing the merits, decisions and reasons for the decision.*
7. *The learned CIT(A) erred in upholding the assessment proceedings which was initiated without the sanction of Principal Chief Commissioner of Income Tax, being the specified authority without discussing the merits, decisions and reasons for the decision,*
8. *The learned CIT(A) erred in upholding additions which were not covered by the reasons/information based on which reassessment proceedings were initiated, where the reasons/information admittedly were not pertaining to the appellant without providing or discussing the reasons for the same.*
9. *Without prejudice to the above, the learned CIT(A) erred in upholding additions which were not even proposed in the show cause notice.*
10. *The learned CIT(A) erred in upholding the additions under section 69A of the Act, despite the fact that explanation of all the amounts credited in bank were provided during the assessment proceedings.*

2. At the outset, the Ld. counsel for the assessee submitted that the Ld. CIT(A) has dismissed the appeal *in-limine* for non persecution. The Ld. counsel for the assessee submitted that notices had been issued by the Ld. CIT(A) within a period of one month from 06.02.2024 to 01.03.2024 only, but the assessee was travelling during that period in places like 'Andaman and Nicobar Islands' having poor internet connectivity thus, the assessee could not accessed to the income-tax portal/e-mails . Hence, he could not comply with the notices issued. The Ld. counsel for the assessee has filed an affidavit of the assessee in this regard and submitted that matter may be restored back to the Ld. CIT(A) for deciding afresh after considering the submission of the assessee.



3. On the contrary, the Ld. Departmental Representative (DR) opposed restoring the appeal to the Ld. CIT(A).

4. We have heard rival submissions of the parties and perused relevant material on record. We find that the Ld. CIT(A) has dismissed the appeal of the assessee in absence of any documents or submission filed during the appellate proceedings despite service of notice. We have also observed that the notices had been issued by the Ld. CIT(A) on four occasion i.e. 06.02.2024; 13.02.2024 ; 21.02.2024 and 01.03.2024. The assessee has filed an affidavit for non-compliance of these notices. The relevant para of the affidavit is reproduced as under:

"I say that I was travelling extensively between the period of 6 February 2024 to 6 March 2024 to many places like Andaman and Nicobar Islands and inlands of Murud Janjira with limited/no network connectivity to access emails when all the hearing notices were issued by the Commissioner of Income Tax (Appeals) and also in such situation wherever there is intermittent connectivity, there is an overload of emails/ messages and thus human possibility of something going unnoticed on the mobile phone. Due to this I could not keep track of all the emails and SMS notifications on realtime basis. Further I did not realise that these notices pertained to my personal matter which the office does not have any access to.

I say that due to the reason mentioned above I could not file any response or submission before the Commissioner of Income Tax (Appeals) when the appeal was fixed for hearing."

4.1 We find that the Ld. CIT(A) has mainly dismissed the appeal *in-limine* following the decision in the case of CIT v. B.N. Bhattacharya reported in 118 ITR 461 and other decisions without deciding the issue in dispute on merit. Under the provisions of section 250(6) of the Act, the Ld. CIT(A) is required to pass an order on merit even in case of non-compliance on the part of the assessee.



Before us, the Ld. counsel for the assessee has justified the reasons for non-compliance of the notices and therefore, in the facts and circumstances of the case and in the interest of substantial justice, we feel it appropriate to set aside the order of the Ld. CIT(A) and restore the issue in dispute involved in the appeal to the file of the Ld. CIT(A) for deciding afresh after taking into consideration submission of the assessee. Since, we have already allowed the ground No. 1 of the appeal of the assessee the other grounds are rendered merely academic and therefore, we are not required to adjudicate upon the same.

5. In the result, the appeal is allowed for statistical purposes.

Order pronounced in the open Court on 02/07/2024.

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

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;
Dated: 02/07/2024
Rahul Sharma, Sr. P.S.

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,
(Assistant Registrar)
ITAT, Mumbai