

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

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI OMKARESHWAR CHIDARA, ACCOUNTANT MEMBER**

**ITA No.1901/M/2024
Assessment Year: 2016-17**

Shri Abdul Karim Mohamed Naik, Flat No.32-A, Rosary House, Gunpower Road, Mazgaon-400 010 Maharashtra PAN: ABTPN9754A	Vs.	Assistant Commissioner of Income Tax, Mumbai Maharashtra
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Ismail Halvadwala, CA
Revenue by : Ms. Dhivya Ruth J. Sr. D.R

Date of Hearing : 18 . 07 . 2024
Date of Pronouncement : 24 . 07 . 2024

O R D E R

Per : Satbeer Singh Godara, Judicial Member:

This assessee's appeal for assessment year 2016-17 arises against the National Faceless Appeal Centre(NFAC) Delhi's DIN & order No.ITBA/NFAC/S/250/2023-24/1053278366(1) dated 29.05.2023, in proceedings under section 143(3) of the Income Tax Act, 1961 (in short 'the Act').

2. Heard both the parties at length. Case file perused.

3. The assessee pleads the following substantive grounds in the instant appeal:

“1. The CIT(A) erred in confirming the addition made by the AO of gift received from son, Dr. Zakir Naik, of Rs.5,97,00,000/- as income u/s. 68 of the I. T. Act, 1961 under the head Income from Other Sources.

2. The CIT(A) erred in not giving proper opportunity of hearing.

3. Your appellant craves leave to add, amend, alter or withdraw any of the grounds whenever considered necessary.”

4. It emerges at the outset with able assistance coming from both the parties as well as a perusal of the learned CIT(A)/NFAC's detailed discussion in paragraphs 5 to 5.5 that the learned CIT(A)/NFAC herein has dismissed the assessee's lower appeal for “non prosecution” than deciding the sam on merits as contemplated u/s 250(6) of the Act requiring him to frame points of determination followed by a detailed adjudication thereupon.

5. Faced with this situation, we sought to know the reason of assessee's non appearance despite the fact that the learned

CIT(A)/NFAC had issued various notices as evident from para 5.2, page 3 in the lower appellate order. The assessee clarifies that the reason of his non appearance was neither intentional nor deliberate on account of communication gap regarding service of the lower appellate authority estimating notices at various levels. Be that as it may, the fact remains that the lower appellate authority has not considered or decided the assessee's substantive grievances pleaded therein as per law (supra). Faced with this situation, we restore the assessee's instant appeal back to the learned CIT(A)/NFAC for its afresh appropriate adjudication as per law subject to a rider that it shall be tax payer's risk and responsibility only to plead and prove all the relevant facts in consequential proceedings within three effective opportunities of hearing. Ordered accordingly.

6. This assessee's appeal is allowed for statistical purposes in above terms.

Order pronounced in the open court on 24.07.2024.

**Sd/-
(OMKARESHWAR CHIDARA)
ACCOUNTANT MEMBER**

**Sd/-
(SATBEER SINGH GODARA)
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.