

IN THE INCOME TAX APPELLATE TRIBUNAL

"B" BENCH, MUMBAI

BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.2536/Mum./2024

(Assessment Year : 2013-14)

M/s Sureshchand Suganchand

Jain

1st Floor, Merchant Chamber,
41 New Marine Lines,
Mumbai-400020
PAN – AACPJ6630M

..... Appellant

v/s

Additional/Joint/Deputy/

ACIT/ITO

National Faceless
Assessment Centre, Delhi.

..... Respondent

Assessee by : Ms Vinita Shah

Revenue by : Shri Ashok Kumar Ambastha, Sr. AR

Date of Hearing – 24/07/2024

Date of Order – 05/08/2024

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 07/05/2024, passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*"learned CIT(A)"*], for the assessment year 2013-14.

2. In this appeal, the assessee has raised the following grounds:-

"1 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 sufficient opportunity of being heard to the appellant.

2. On the facts and circumstances of the case as well as in law, the learned CIT(A) has erred in confirming the action of learned Assessing Officer in reopening the case u/s 147 of the Income Tax Act, 1961, without considering the facts and circumstances of the case.

3. On the facts and circumstances of the case as well as in law, the learned CIT(A) has erred in confirming the action of the learned Assessing Officer in making an addition of Rs.70,23,375/- u/s 69A of the Income Tax Act, 1961 as alleged unexplained money on the plea that the assessee is the beneficiary of the fictitious profits in commodity trading, without considering the facts and circumstances of the case."

3. During the hearing, the learned Authorised Representative ("learned AR") at the outset submitted that the learned CIT(A) dismissed the appeal filed by the assessee vide ex parte order. The learned AR further submitted that the learned CIT(A) issued three (3) notices to the assessee and in response to the last two notices, the assessee sought adjournment. However, the learned CIT(A) proceeded to decide the assessee's appeal ex parte without granting the adjournment as sought by the assessee. Accordingly, the learned AR submitted that there was no willful or deliberate attempt on the part of the assessee for not complying with the notices issued by the learned CIT(A).

4. Having considered the submissions and perused the material available on record, it is evident that the learned CIT(A) has passed the order ex parte due to the non-appearance of/on behalf of the assessee. Now in appeal before us, the assessee is duly represented by the learned AR and wishes to pursue the litigation against the addition made by the AO. During the hearing, the learned AR submitted that the learned CIT(A) dismissed the appeal filed by the assessee ex parte without granting an adjournment as sought by the assessee.

In view of the above, we are of the considered opinion that in the interest of

justice, the assessee be granted one more opportunity to represent its case on merits before the learned CIT(A). Consequently, we deem it fit and proper to set aside the impugned order and restore the matter to the file of the learned CIT(A) for *de novo* adjudication of the appeal on merits after consideration of all the details/submissions as may be filed by the assessee. Needless to mention no order shall be passed without affording reasonable opportunity of hearing to the parties. The assessee is directed to appear before the learned CIT(A) on all the dates of hearing as may be fixed without any default. As the matter is being restored to the file of the learned CIT(A) for adjudication on merits, the other grievances raised by the assessee in the present appeal do no call for adjudication at this stage. Accordingly, grounds raised by the assessee are allowed for statistical purposes.

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

Order pronounced in the open Court on 05/08/2024.

Sd/-

**OM PRAKASH KANT
ACCOUNTANT MEMBER**

Sd/-

**SANDEEP SINGH KARHAIL
JUDICIAL MEMBER**

MUMBAI, DATED: 05/08/2024

Vijay Pal Singh, (Sr. PS)

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Mumbai; and
- (5) Guard file.

By Order

Assistant Registrar
ITAT, Mumbai