

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

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER**

**ITA No.1080/M/2024
Assessment Year: 2013-14**

Sandeep Ramesh Keni B-Wing, Room No. 24, Panvel Plaza, Behind S. K. Bajaj Showroom, Panvel, Raigad-410206. PAN: AVAPK7931R	Vs.	The Commissioner of Income Tax Government of India Ministry of Finance, Income Tax Department, National Faceless Appeal Centre, Delhi- 110011
(Appellant)		(Respondent)

Present for :

Assessee by : Shri Mayank Bagla, Adv. a/w Shri. Hiten Lala,
Adv.

Revenue by : Smt. Kakoli Uttam Ghosh, D.R.

Date of Hearing : 24 . 06 . 2024

Date of Pronouncement : 25 . 07 . 2024

O R D E R

Per : Ratnesh Nandan Sahay, Accountant Member:

1. This appeal has been filed by the appellant against the Order of the Ld. CIT (Appeals) passed u/s. 250 of the Income Tax Act [the 'Act' in short]

vide DIN & Order No. ITBA/NFAC/S/250/2023-24/1059163925(1)

Dated 28/12/2023 for the Assessment Year 2013-14.

2. Following grounds of appeal have been raised by the appellant:

1. *“The Commissioner of Income Tax (Appeals) has erred in not appreciating that there was no requirement to file Return of Income Tax and/or pay an amount equal to the amount for Advance Tax, since the net taxable income of the Appellant was under Rs.2,00,000/- (Rupees Two Lakhs) i.e. below the taxable limit.*
2. *The Commissioner of Income Tax (Appeals) erred in not appreciating the fact that the requirement u/s.249(4) (b) of the IT Act, 1961 would not be applicable to the Appellant in as much as the Net Taxable income of the Appellant was below the taxable limit. It was therefore, Appellant the made payment of Rs.1000 only as appeal fee u/s. Sr. No. 16 of Form - 35.*
3. *The Commissioner of Income Tax (Appeals) erred in not appreciating the fact that the Order dated 19/08/2021 passed u/s.147 r.w.s 144 of the IT Act, 1961 is patently illegal and in complete disregard to the principal of natural justice in as much as no notice u/s 148 of IT Act, 1961 was duly served upon Appellant herein.*
4. *The Commissioner of Income Tax (Appeals) erred in not appreciating the fact that the Order dated 19/08/2021 passed u/s.147 r.w.s 144 of the IT Act, 1961 is patently illegal and in complete disregard to the principal of natural justice in as much at no notice u/s 142(1) of IT Act, 1961 was duly served upon the appellant herein.*
5. *The Commissioner of Income Tax (Appeals) erred in not appreciating the fact that the Order dated 19/08/2021 passed u/s.147 r.w.s.144 of the IT Act, 1961 is patently illegal and in complete disregard to the principal of*

natural justice in as much as no show cause notice under IT Act, 1961 was duly served upon the Appellant herein.

6. *The Commissioner of Income Tax (Appeals) erred in recording that ample opportunities have been provided to the Appellant to offer submissions before the NFAC (AO), despite no knowledge notice being served upon Appellant herein.*
7. *The Commissioner of Income Tax (Appeals) erred in not appreciating the fact that the nature and sources of deposit were not unverified and/or unexplained, in as much as the Appellant vide its declaration dated 09/02/2022 had duly provided detailed explanation qua the purported claim by the Assessing Officer, despite which an ex-parte Order u/s.147 came to be passed.*
8. *The Commissioner of Income Tax (Appeals) erred in not talking into consideration the explanation provided by the Appellant vide its declaration dated 09/2/2022 while passing its impugned Order.*
9. *The Commissioner of Income Tax (Appeals) erred in not appreciating the fact that the total business receipt by the Appellant for the concerned assessment year was Rs.12,63,770/- (Rupees Twelve Lakhs Sixty-Three Thousand Seven Hundred Seventy Only) and therefore presumptive income u/s.44 AD (8% of Gross Receipt), comes out to be Rs.1,01,101.60/- (Rupees One Lakh, One Thousand, One Hundred, One Rupees and Sixty Paise). The Appellant had received Rs.750/- (Seven Hundred and Fifty Rupees) towards interest from his savings bank account. Therefore, the total income that would be taxable is Rs.1,01,851.60/- (Rupees One Lakh, One Thousand, Eight Hundred, One Rupees and Sixty Paise), which is below the minimum taxable limit.*
10. *The Commissioner of Income Tax (Appeals) erred in not appreciating that the NFAC (AO)*

did not accord any hearing to the Appellant despite the Appellant making express request for the same.

- 11. The impugned Order has been passed without any application of mind, much less a judicial mind.*
- 12. The impugned Order has been passed without following the due process of law and also in express contravention to the provisions of IT Act, 1961.*
- 13. The impugned Order has been passed without according any reasons, much less a plausible reason for rejecting the Appeal.*
- 14. The impugned Order is a non-speaking Order and therefore, ought to be quashed and set aside.*
- 15. During the said assessment year the Appellant had business income that comes under 44AD of the income tax act, 1961 and net taxable income was below the taxable limit. During the said assessment year The Appellant had business income that comes under 44AD of the income tax act, 1961 and net taxable income was below the taxable limit.*
- 16. The Appellant had received an email regarding the show cause notice for penalty proceedings under section 271 of the income tax act, 1961, The Appellant found out the same on the portal, and realized that he had assessment proceeding for the financial year 2012-13 i.e. assessment year 2013-14. All the notices regarding assessment proceedings issued by the assessing officers were sent only by mail to my old consultants mail id nothing though by post.*
- 17. During the said assessment year the Appellant have business in the name and style of Om Sai Cable network. the source of cash which the Appellant had deposited in my saving account Rs.11,13,377/- (Rupees Eleven Lakhs Thirteen Thousand Hundred Three Seventy Seven Only) my business collection during the said assessment year and previous*

years Rs.1,44,530/- (Rupees One Lakh Forty Four Thousand Five Hundred Thirty Only) which The Appellant had withdrawn from my account.

18. The Appellant had commission income of Rs.1,50,000/- (Rupees One Lakh Fifty Thousand Only) and deducted TDS on said income of Rs.15,000 /- (Rupees Fifteen Thousand Only) at the rate of 10 percent.

19. The Appellant do not have any other income which assessing officer mentioned in assessment order

20. The Appellant be allowed to add/alter/amend the present appeal as and when necessary.”

3. The facts of the case, in brief, are that the assessee is a non-filer and has not filed income tax return for the A.Y.2013-14. The case was selected for scrutiny and notice u/s. 148 was issued to the assessee after recording reasons and getting approval of the competent authority on the basis of the information available in AIR data given as under:-

Sr. No.	Description of information	Amount
1.	Deposited cash of Rs.10,00,000/- or more in a saving bank account	12,52,300/-
2.	Deposit in cash aggregating Rs.2,00,000/- or more, with a banking company	10,22,000/-
3.	TDS- Return- Commission of brokerage (Section 194H)	1,50,000/-
	Total	24,24,300/-

4. The Ld. AO, thus, issued notice u/s.142(1) of the Act also the show cause notice on different dates to seek explanation of the assessee on the above cash deposits. However, the assessee neither filed a return of income nor made any compliance to the notices issued by the Ld. AO and added a sum of Rs.43,73,100/- given as under: -

Sr. No.	Description of information	Amount
1.	Deposited cash of Rs.10,00,000/- or more in a saving bank account	12,52,300/-
2.	Deposit in cash aggregating Rs.2,00,000/- or more, with a banking company	10,22,000/-
3.	TDS Return- Commission of brokerage (Section 194H)	19,98,800/-
4.	TDS Return- Commission of brokerage (Section 194C)	1,00,000/-
5.	Total	43,73,100/-

5. Aggrieved by the order of the Ld. AO, assessee filed appeal before the Ld. CIT(A) who dismissed the appeal of the assessee on the ground that as per the provisions of section 249(4)(b) of Income Tax Act, where no return has been filed by the assessee, the assessee has to pay amount equal to the amount of advance tax which was payable by him, otherwise, appeal shall not be admitted. Since, the appellant has not offered 'YES' comments at serial no. 9 of form 35, the appellant was asked vide DIN No. and Letter No.

ITBA/NFAC/F/APL_1/2023-24/1058520937(1) dated 06.12.2023 to intimate whether it has made payment of tax which includes element of advance tax in compliance to notice of payment u/s. 156 of the Act. The appellant failed to give any information that it has made payment of amount equal to the advance tax which was due on its income. Since, the appellant has not filed the return of income as well as not paid an amount equal to the amount of advance tax which was payable by it, present appeal is not liable to be admitted. The appeal is infructuous and is, therefore, dismissed.

6. The present appeal has been filed against the impugned order of the Ld. CIT(A). During the course of appellate proceedings before us, the appellant has submitted a paper book in which it was stated as under: -

- a. That the Ld. CIT(A) has not appreciated the fact that there was no requirement to file return of income tax and pay advanced tax as net taxable income of the appellant is under Rs.2,00,000, i.e. below the taxable limit.
- b. That the Ld. CIT(A) has not appreciated the fact that section 249(4) of the Act will not apply in the case of the appellant as the appellant has the income below the taxable limit.
- c. That the Ld. CIT(A) has not appreciated the fact that the order passed u/s. 147 r.w.s. 144 of the Income Tax Act by the Ld. AO is patently illegal and incomplete disregard to the principles of natural

justice in as much as no notice u/s. 148 of the Act was duly served upon the appellant.

- d. That the Ld. CIT(A) has not appreciated the fact that no notice u/s. 142(1) and show cause notice issued by the Ld. AO was duly served on the assessee.
 - e. That no opportunity of being heard was provided to the appellant by the NFAC and the appellant had no knowledge of any notice being served upon the assessee.
 - f. That the assessee vide its letter dated 09/02/2022 had declared before the CIT (Thane) that he had received an email regarding the show cause notice for penalty proceedings u/s. 271 of the Income Tax Act and that assessment proceeding for the assessment year 2013-14 was pending and all the notices regarding assessment proceedings issued by the Ld. AO were send only by email to my old consultants' email id and nothing by post and therefore, I was not aware of the same and Ld. AO passed ex-parte assessment order u/s. 147 r.w.s. 144 of the Income Tax Act dated 19/08/2021 and thereafter he has downloaded the assessment order, computation of income and demand notice from income tax portal.
7. The assessee in that declaration has also given the cash deposits and cash withdrawals in his bank account made on various dates along with the copy of bank account and claimed that the appellant is a cable operator and

registered in the name of Om Sai Cable Network and is not very conversant with the income tax proceedings and the notices issued to him were never served on him and served on the email id of the old consultants and that is why he could not attend the assessment proceedings. It was also claimed that the Assessee's case is covered u/s.44AD of the Income Tax Act and therefore, his income is below taxable limit.

8. We have considered the facts of the case and the submissions made as above and accordingly, set aside the impugned order and remand the matter back to the file of the Ld. CIT(A) to provide the appellant opportunity of being heard and then decide the issue as per law. The appellant is also directed to appear before the Ld. CIT (A) to explain his case.
9. In the result, the appeal is allowed for statistical purpose.

Order pronounced in the open court on 25.07.2024

**Sd/-
AMIT SHUKLA
JUDICIAL MEMBER**

**Sd/-
RATNESH NANDAN SAHAY
ACCOUNTANT MEMBER**

Mumbai, Dated: 25.07.2024.

Snehal C. Ayare, Stenographer

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.