

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH “B”, MUMBAI  
BEFORE SHRI. PRASHANT MAHARSHI, ACCOUNTANT MEMBER  
AND  
SHRI. RAJ KUMAR CHAUHAN, JUDICIAL MEMBER  
ITA NO. 961/MUM/2024 (A.Y: 2010-11)**

Bharat Manubhai Jethwa Vs. ITO 19(1)(2)  
R. No. 65, 2<sup>nd</sup> Floor, 48, Noor Kautilya Bhavan, Mumbai.  
Manzil, Kumbharwada, 6<sup>th</sup> Lane,  
Mumbai – 400 004.

**PAN: AHIPJ1010G**

**(Appellant)**

**(Respondent)**

**Assessee Represented by : Ms. Geeta Pardesi**  
**Department Represented by : Shri. Ashok Kumar**  
**Ambastha – Sr. A.R.**  
**Date of conclusion of Hearing : 30.07.2024**  
**Date of Pronouncement : 13.08.2024**

**ORDER**

**PER RAJ KUMAR CHAUHAN (J.M.):**

1. This appeal is filed by the appellant/assessee against the order dated 18.01.2024 of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as the “CIT(A)”], passed under section 250 of the Income Tax Act, 1961 [hereinafter referred to as “the Act”] for the A.Y. 2010-11.



2. The assessee who is an individual filed his return of income on 25.03.2011 total income of Rs. 2,53,709/-. The return was processed u/s. 143(1) of the Act. Notice u/s. 148 of the Act was issued on 30.03.2017, wherein the assessee requested in his response, to treat the return of income filed on 25.03.2021 as return of income filed in response to notice u/s. 148 of the Act. Accordingly, notice u/s. 143(2) of the Act was issued upon the assessee and simultaneously notice u/s. 142(1) was also issued alongwith detailed questionnaire to the assessee calling for details, clarifications, etc.
  
3. The assessee was asked to provide source of cash deposited of Rs. 55,27,350/- in saving bank account. The assessee failed to provide any explanation regarding to source of cash deposit and has only filed bank statement which was found of no consequences. Since the assessee failed to submit any document/explanation regarding this source of cash deposit and accordingly a sum of Rs. 55,27,350/- was added back to the total income. Penalty proceedings u/s. 271(1)(c) of the Act is also initiated separately. Vide impugned order the Ld. CIT(A) in appeal has confirmed the additions made by the Ld. AO. Three notices were issued by the Ld. CIT(A) during the appellate proceedings but the appellant failed to



respond to the notices issued and has not filed any reply/submissions. Since the appeal was pending before the Ld. CIT(A) for the last 6 years, Hence, the Ld. CIT(A) proceeded to dispose off the same on merit and accordingly passed the impugned order. Aggrieved by the impugned order, wherein the order of the Ld. AO making addition of Rs. 55,27,350/- as income of the assessee has been upheld the assessee is in appeal before us and has raised following grounds:

- “1. *First notice was issued on 18.09.2021 asking for compliance of 05.09.2021 adding that time the covid pandemic has created havoc in the society. Therefore, there is every possibility that the assessee might have been prevented from filing returns due to covid pandemic.*
2. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in making addition of Rs. 55,27,350/- on account of unexplained cash deposit. The said addition may please be deleted.*
3. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in treating the entire cash deposit of Rs. 55,27,350/- as the unexplained income of the Appellant without considering the submissions made by the Assessee as regards sales, purchase and expenses. The said addition may please be deleted.*
4. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in treating the entire cash deposit as unexplained income of the Appellant without considering the withdrawals made by the Assessee.*
5. *Without prejudice to the above grounds of appeal, the ld. CIT(A) has erred in treating the entire cash deposit as the unexplained income of the Assessee instead of treating the peak credit as the Income of the Assessee. The said addition may please be restricted to the Peak credit.*



6. *The Assessee craves leave to add, alter, amend or drop any Grounds of Appeal at the time of the Appeal Proceedings.”*
4. We have heard the Ld. AR on behalf of the assessee and the Ld. DR on behalf of the department. At the very outset, it was submitted by the Ld. AR on behalf of the assessee/appellant that the assessee has not been afforded effective hearing by the Ld. CIT(A) and for that reasons the assessee could not pursue its remedy against the order of the Ld. AO making addition of Rs. 55,27,350/- as undisclosed income.
5. It is further submitted that the assessee has all the documents and the explanations and would submit the same to the Ld. AO in case the opportunity is afforded to him. It is further assured by the Ld. AR that the assessee undertakes to submit the documents and explanation before the Ld. AO without fail. It is further submitted that the end of justice requires that the assessee should not be condemned unheard and needs to be given effective opportunity for presenting its case before the Ld. AO.
6. The Ld. DR on the other hand submitted that the sufficient opportunity was granted but assessee has failed to avail the same and therefore he does not deserve further opportunity and therefore the Ld. DR has relied upon



the judgment of the lower authorities stating that there is no merit in the case.

7. We have considered the rival submissions and carefully examined the facts and circumstances of the case, Sub section 2(a) of Section 250 of “the Act”, provides that the appellant, either in person or by an authorized representative has the right to be heard at the hearing of the appeal.
  
8. On perusal of the impugned order, it is noticed that the Ld. CIT(A) has recorded that the notice of the appeal was given 2/3 times but the assessee has failed to respond or file any reply and accordingly he proceeded to decide appeal on merit. Admittedly, the affective hearing as required by section 2(a) of 250 of the Act has not taken place in this case, the end of justice requires that the assessee/appellant need to be given effective hearing wherein he can present his case. First notice was issued on 18.02.2021 asking for compliance of 05.03.2021, and at that time the covid pandemic has created havoc in the society. Therefore, there is every possibility that the assessee might have been prevented from filing response due to covid pandemic also.



9. These facts and circumstances shows that the effective hearing has not been given to the assessee/appellant and end of justice requires that the assessee should also not condemned unheard and needs to be given one more opportunity. Accordingly, we are of the considered opinion that the assessee/appellant be given one more opportunity to submit his response, reply and document in support of his before the Ld. AO within a period of 60 days from this order. The matter is accordingly restored to the filing of the Ld. AO who may dispose of the matter after filing of the response by the assessee in compliance of this order. If the assessee/appellant fails to act according to the direction given by us, the Ld. AO shall be at liberty to act as per the law in the matter. The appeal is accordingly allowed for statistical purposes in above manner.
10. In the result, appeal filed by the assessee is allowed for statistical purposes.

**Order pronounced in the open court on 13.08.2024**

**Sd/-**  
**(PRASHANT MAHARSHI)**  
**(ACCOUNTANT MEMBER)**

**Sd/-**  
**(RAJ KUMAR CHAUHAN)**  
**(JUDICIAL MEMBER)**



Mumbai / Dated 13.08.2024  
*Karishma J. Pawar, (Stenographer)*

**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**