

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH “B”, MUMBAI  
BEFORE SHRI. OM PRAKASH KANT, ACCOUNTANT MEMBER  
AND  
SHRI. RAJ KUMAR CHAUHAN, JUDICIAL MEMBER  
ITA NO. 4679/MUM/2023 (A.Y: 2014-15)**

Neelam Narendrakumar Jhamb      Vs. National Faceless Appeal  
2<sup>nd</sup> Floor, A Wing, Best Commercial      Centre (NFAC), Delhi.  
Complex, Andheri (West), Mumbai  
– 400058.

**PAN: ACSPJ5659G**

**(Appellant)**

**(Respondent)**

**Assessee Represented by                   :   Shri. Vimal Punmiya**  
**Department Represented by               :   Shri. Sunil Shinde Sr. AR.**  
**Date of conclusion of Hearing             :   16.05.2024**  
**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 31.10.2023 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. 2014-15.



2. The brief facts as culled out from the proceedings before the Ld. Lower Authorities are as under:
3. The assessee who is an individual filed its return of income on 14.11.2014 declaring total income of Rs. 47,34,352/-. The return of income was processed u/s 143(2) of the IT. Act, 1961. Thereafter, the case has been selected for scrutiny under CASS and accordingly, notice u/s. 143(2) dated 31.08.2015 was issued and served on the assessee. Subsequently, notices u/s. 142(1) has been issued to the assessee. In response to the notices issued, Shri Achal Bangani, CA and AR of the assessee attended from time to time. The details called for have been furnished which are placed on record. The assessee has shown Income from House Property, Capital Gain and other sources and loss from Business and Profession.
4. After considering the material submitted by the assessee and giving the hearing, the Ld. AO concluded in his order that the assessee's commodity transactions in NSEL was found as speculative transaction as defined u/s. 43(5) of the Act. Thus, the loss from commodity transactions amounting to Rs. 96,13,860/- is held as loss from speculative business. Penalty proceedings u/s. 271(1)(c) were also initiated on account of furnishing inaccurate particulars of income/concealment of income.



5. Aggrieved by the said order, the assessee filed an appeal before the Ld. CIT(A) which was disposed off vide impugned order on the ground that various notices were issued u/s. 250 of the Act to the assessee but on all these occasions, the appellant did not file any written submissions and filed only application seeking adjournment on two occasions which was granted. After enabling the window for communication with the Ld. CIT(A), by the NFAC with effect from 01.11.2022 also, no communication has been received from the appellant. Hence, the Ld. CIT(A) was of the opinion that on account of non-compliance by the appellant, he has no alternative but to decide the appeal ex parte and thereby passed the impugned order, wherein he upheld the order of the Ld. AO and dismissed the appeal. Against this order of dismissed of the appeal, the assessee is in appeal before us and has raised following grounds:

- “1. *On the facts and circumstances of case and law, the Ld. CIT(A) erred in passing an ex-parte order u/s 250 against the principal of natural justice.*
2. *On the Facts and Circumstances of the case as well as in law, the Learned CIT(A) erred in confirming the disallowance/addition of Rs. 57,46,514/- being loss in share trading.*
3. *On the Facts and Circumstances of the case as well as in law, the Learned CIT(A) erred in confirming the treating of loss of Rs. 96,13,860/- from commodities in NSEL as speculation loss.*



4. *On the Facts and Circumstances of the case as well as in law, the Learned CIT(A) erred in confirming addition of Rs. 1,72,395/- (3 % of Rs. 57,46,514/-) u/s. 69C being estimated commission without bringing any material on record to prove/substantiate the same.*
  5. *The Ld. CIT(A) erred in charging the interest under section 234A 234B and 234C of the Income Tax Act 1961.*
  6. *The Ld. CIT(A) erred in initiating Penalty proceeding under section 274 r.w.s 271 of the Income Tax Act 1961*
  7. *The appellant craves leave to add further grounds or to amend or alter the existing grounds of appeal on or before the date of hearing.”*
6. We have heard the Ld. AR on behalf of the assessee and Ld. DR on behalf of the department. At the very outset, it has been argued on behalf of the appellant that since the appellant was an individual super senior citizen of old age was therefore not well aware of the technological aspects as a result, he could not present his case before the Ld. CIT(A) effectively. He further submitted that one opportunity be given to the appellant in the interest of justice for presenting his case before the Ld. CIT(A) and matter be restored back to the file of the Ld. CIT(A). In support of his submissions, the appellant has filed its affidavit giving detail of facts and circumstances which allegedly prevented him from effectively contesting the matter/appeal before the Ld. CIT(A). In his affidavit dated 20.05.2024, the relevant portion of the affidavit is reproduced as under:



- *“That I am the appellant in the aforementioned appeal and am well acquainted with the facts of the case.*
- *That the Assessing Officer passed an order dated 29.12.2016 against me, and during these proceedings, I had filed replies before the Assessing Officer in person through my authorised representative Anchal Bangani*

## **2. Proceedings Before CIT(A):**

- *That I subsequently filed an appeal before the Commissioner of Income Tax (Appeals) [CIT(A)] against the said order of the Assessing Officer. However, these proceedings before the CIT(A) were conducted in a faceless manner.*

## **3. Technological Challenges:**

- *That being an 80-year-old super senior citizen, I am not well-versed with technology, including the use of computers and managing electronic communications.*
- *That this lack of technical proficiency severely hindered my ability to navigate and respond to the electronic communications and emails received from the Department during the faceless proceedings.*

## **4. Health Issues:**

- *That during the period when the notices from the CIT(A) were sent, I was also suffering from significant medical problems.*
- *That my health issues, which required regular medical attention affected my ability to manage daily activities, including monitoring emails and other communications.*

## **5. Non-Compliance with Notices:**

- *That due to the aforementioned technological and health-related challenges, I inadvertently missed the emails and notices sent by the CIT(A).*
- *That my failure to respond to the notices was not intentional but rather due to genuine difficulties faced during this period.”*



7. We have also heard the Ld. DR on behalf of the revenue who relied upon the judgement of the Ld. CIT(A) stating that the appeal is devoid of merit and liable to be dismissed.
  
8. We have considered the rival submissions and carefully examined the facts and circumstances and the contents of his affidavit. In his affidavit, the assessee has unequivocally brought on record the facts and circumstances which prevented him from effectively pursuing his appeal before the Ld. CIT(A). We have noticed the contents of the affidavit wherein, it is stated that he is super senior citizen, he is 80 years old and he is not well conversant with the technology and since the hearing was through NFAC, therefore, he could not effectively present his case despite seeking adjournment on 2 days. 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.
  
9. In the given facts and circumstances of this case the end of justice requires that the appellant needs to be given an effective hearing as contemplated by the provisions noted above. Nothing contrary to the contents of the affidavit of the appellant has been brought on record by the revenue.



10. For these reasons, the impugned order is accordingly set aside and matter is restored back to the file of the Ld. CIT(A) with the direction to the assessee/appellant to present his case/filed the documents in support of his case before the Ld. CIT(A) during a period of 60 days from date of this order. The appeal is allowed accordingly, in above terms.
11. In the result, appeal filed by the assessee is allowed in the above terms.

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

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