

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

**BEFORE: SHRI NARENDRA KUMAR BILLAIYA, ACCOUNTANT  
MEMBER**

**&**

**SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER**

**ITA No. 3361/MUM/2024  
(Assessment Year : 2017-18)**

Jitendra Salunke B/4 72, Tenament, Vithhal Chavan Marg, Near Damodar Hall, Parel, Mumbai-400012.	Vs.	Income-tax Officer-42(2)(3) Kautilya Bhavan, Bandra Kurla Complex, Bandra (East), Mumbai-400051.
<b>PAN/GIR No. AVAPS2290K</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri. Poojan Mehta
Revenue by	Shri. R. R Makwana, Sr. DR
<b>Date of Hearing</b>	<b>03/09/2024</b>
<b>Date of Pronouncement</b>	<b>03/09/2024</b>

**आदेश / O R D E R**

**PER SUNIL KUMAR SINGH (J.M):**

1. This appeal has been preferred against the impugned order dated 30.04.2024 passed in Appeal no. NFAC/2016-17/10315473 by the Ld. Commissioner of Income-tax(Appeals)/ National Faceless Appeal Centre (NFAC) [hereinafter referred to as the "CIT(A)"] u/s. 250 of the Income-tax Act, 1961 [hereinafter referred to as "Act"] for the

Assessment year [A.Y.] 2017-18, wherein learned CIT(A) has dismissed assessee's first appeal in default of assessee.

2. The brief facts of the appeal state that appellant assessee filed its return of income through Shri Vijay Sawant, Tax Practitioner for A.Y. 2017-18 declaring total income of Rs. 2,98,080/-. During the survey u/s. 133A of the Act, Shri Vijay Sawant, in his statement recorded on 30.01.2018, admitted that in many returns filed through him for salaried persons, income under the head salaries was suppressed by excluding and/or misreporting the deductions/exemptions against the salary. Notice issued to assessee u/s. 148 of the Act was treated to be a notice u/s. 148A(b) in accordance to the Finance Act 2021 as directed by Hon'ble Supreme Court vide order dated 04.05.2022 passed in Civil Appeal No. 3005/2022 in UOI and others V Shri Ashish Agarwal and others. Further notice u/s. 148A(b) dated 15.04.2021 was issued and served upon the assessee. Assessee did not respond to the notice. Subsequently an order u/s. 148A(d) of the Act dated 19.07.2022 was passed with the prior approval of the competent authority. Notice u/s. 148 of the Act dated 22.07.2022 was also issued and served upon the

assessee. Assessee did not respond, hence notice u/s. 142(1) dated 17.01.2023 was issued but for no avail. Learned assessing officer assessed the total income u/s. 144 of the Act at Rs. 3,69,326/-. Aggrieved by the assessment order, assessee preferred an appeal before learned CIT(A) who dismissed assessee's appeal in default of assessee.

3. Assessee filed this second appeal before the Tribunal on the ground that the notices to the assessee were not sent through NFAC and the impugned order has been passed in violation of the principles of natural justice.
4. In response to the notice issued by the tribunal, learned DR appeared and participated in the hearing.
5. We have perused the records and heard learned representatives for both the parties.
6. Learned DR has submitted that assessee was provided sufficient opportunity of hearing by issuance of notices on four occasions by learned CIT(A) but for no avail. Learned DR has supported impugned order passed by the first appellate authority.

7. Perusal of the impugned order shows that assessee filed first appeal with the delay of about 260 days. Learned CIT(A) condoned the said delay on the basis of reasons stated in form 35. The first appellate authority issued notices to the assessee on four different occasions but for no avail. Learned CIT(A) dismissed the first appeal in default of assessee.
8. We notice that learned CIT(A) was expected to state the points for determination, the decision there on and the reasons for the decision as provided u/s. 250(6) of the Act. We are conscious of the fact, that assessee has not turned up before the first appellate authority in response to the notices issued on four different occasions. However, in the interest of justice and fair play, we deem it appropriate to remit the matter back to the file of learned CIT(A) for denovo adjudication on merit. We further direct the assessee to be diligent and cooperative in attending the hearings and making submissions before the first appellate authority for the expeditious and effective disposal of the appeal. Assessee should refrain from seeking any adjournment but for compelling and unavoidable reasons. Needless to say that learned CIT(A) shall ensure the observance of the principles of natural justice. It is made clear

that we have not made any observation on the merits of the case. The appeal is thus liable to be allowed.

9. In the result, the appeal is allowed. Impugned order dated 30.04.2024 is set aside. The case is restored back to the file of the learned CIT(A) for statistical purposes.

Order pronounced on 03.09.2024.

**Sd/-**  
**(NARENDRA KUMAR BILLAIYA)**  
**ACCOUNTANT MEMBER**

Mumbai; Dated 03/09/2024  
Anandi Nambi, *Steno*

**Copy of the Order forwarded to:**

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

**Sd/-**  
**(SUNIL KUMAR SINGH)**  
**JUDICIAL MEMBER**

//True Copy//

BY ORDER,

(Asstt. Registrar)  
**ITAT, Mumbai**