

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

**BEFORE: SHRI PRASHANT MAHARISHI, ACCOUNTANT
MEMBER**

&

SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER

**ITA No. 2538/MUM/2024
(Assessment Year : 2016-17)**

Oriental Rail Infrastructure Limited Survey No 49, Village Aghai Taluka Shahpur Dist Thane, 421301.	Vs.	Income Tax Department Room No 142G, 1 st Floor, Aayakar Bhavan Maharshi Karve Road, Mumbai-400020.
PAN/GIR No. AAACO0490M		
(Appellant)	..	(Respondent)

Assessee by	Mr. Nishit Gandhi
Revenue by	Mr. Prasoon Kabra, CIT DR
Date of Hearing	10/09/2024
Date of Pronouncement	13/09/2024

आदेश / O R D E R

PER SUNIL KUMAR SINGH (J.M):

1. This appeal has been preferred against the impugned order dated 21.12.2023 passed in Appeal no. NFAC/2015-16/10252526 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.] 2016-17, wherein learned CIT(A) has dismissed assessee's appeal in default of the assessee.
2. The brief facts under appeal state that the assessee filed his return of income for A.Y. 2016-17 on 17.10.2016, declaring total income of Rs. 6,55,45,670/-. The assessment was completed on 22.12.2018. Action u/s. 147 of the Act was initiated after noticing that the income escaped assessment. Notice u/s. 148A(b) of the Act in compliance of Hon'ble Supreme Court's order dated 04.05.2022 passed in CA 3005/2022 was issued and served upon assessee. Assessee did not respond to various notices. Hence, assessment u/s. 144 of the Act was completed and an amount of Rs. 58,33,915/- was disallowed by learned assessing officer.
 3. Aggrieved by the assessment order, assessee preferred an appeal before learned CIT(A), who dismissed assessee's first appeal in default of assessee.
 4. Assessee has filed this second appeal on the ground that learned CIT(A) has erred in confirming the disallowance of Rs. 58,33,915/- made by learned assessing officer by impugned ex-parte order against the principles of natural justice.
 5. In response to the notice issued by the tribunal, learned DR appeared and participated in the hearing.
 6. We have perused the records and heard learned representatives for both the parties.
 7. Learned representative for the assessee has, at the very outset informed that impugned order has been passed by learned

CIT(A) ex-parte in violation of the principles of natural justice.
Prayed to set aside the impugned order.

8. Learned DR has submitted that assessee was provided sufficient opportunity of hearing by learned CIT(A) but for no avail. Learned DR has supported impugned order.
9. We notice that the assessee did not respond to the various notices issued by the first appellate authority. However, it is further noticed that learned CIT(A) passed ex-parte impugned order without any discussion on the merits of the case, whereas learned CIT(A) was expected to state the points for determination, decision thereon and the reasons for the decision as provided u/s. 250(6) of the Act. In the circumstances and in the interest of justice and fair play, we deem it just and appropriate to afford last opportunity to the assessee and remit the matter back to the file of learned CIT(A) for adjudication on merits. We further direct the assessee to be diligent and cooperative in attending the hearings and making submissions before the learned CIT(A) for the expeditious and effective disposal. Assessee should refrain from seeking any adjournment but for compelling and unavoidable circumstances. 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 in respect of the merits of the case. The appeal is liable to be allowed.

10. In the result, the appeal is allowed. Impugned order dated 21.12.2023 is set aside. The case is restored back to the file of the learned CIT(A) for statistical purposes.

Order pronounced on 13.09.2024.

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER

Mumbai; Dated 13/09/2024
Anandi Nambi, *Steno*

Copy of the Order forwarded to:

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

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai