

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH “K(SMC)”, MUMBAI
BEFORE SHRI. PRASHANT MAHARSHI, ACCOUNTANT MEMBER
AND
SHRI. RAJ KUMAR CHAUHAN, JUDICIAL MEMBER
ITA NO. 1934/MUM/2024 (A.Y: 2012-13)**

Pranksters Inn Private Limited 67, Kundamal House, Opp. Metro Huges Road, Mumbai – 400007. PAN: AAACP9756D	Vs.	DCIT, Circle 5(2)(2) Room No. 525, 5 th Floor, Aayakar Bhavan, Maharshi Karve Road, Mumbai – 400020.
(Appellant)		(Respondent)

Assessee Represented by	:	None
Department Represented by	:	Shri. Dhiraj Kumar (Sr. AR.)
Date of conclusion of Hearing	:	18.07.2024
Date of Pronouncement	:	08.10.2024

ORDER

PER RAJ KUMAR CHAUHAN (J.M.):

1. This appeal is filed by the appellant/assessee against the order dated 12.09.2023 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. 2012-13, wherein the



appeal has been dismissed ex parte and Ld. AO's order has been confirmed.

2. The brief facts of the case are that the assessee company filed its return of income on 15.10.2012 declaring taxable income at Nil. The case was selected for scrutiny and the assessment was completed u/s. 143(3) of the Act on 27.02.2015. It was observed during the assessment proceedings that assessee had a property at Lonavala whose notional income has not been declared by the assessee and therefore, the notional income from Bunglow at Lonavala was estimated at Rs. 2 lacs per month and added to the assessee's income. The Ld. AO had thus added income from Bunglow of Rs. 16,80,000/- and disallowance of depreciation of Rs. 56,60,945/- and also added unexplained expenses u/s. 69C to the tune of Rs. 1,70,000/-. Accordingly, demand of Rs. 80,25,290/- has raised by the Ld. AO. The appeal filed before Ld. CIT(A) was dismissed.
3. The assessee/appellant has moved an application seeking condonation of delay, if any stating that the impugned order dated 12.09.2023 has never been served upon the assessee and unless and until the same was served upon the assessee, there was no requirement of filing the appeal and as



such the appeal has been filed immediately when the appellant/assessee came to know about the passing of the impugned order.

4. Nothing has been brought on record by the revenue about the service of the impugned order upon the assessee. It is submitted by the Ld. DR that the impugned order might have been available on email or was also available on the departmental portal from where the appellant could have download the same.
5. We have considered the rival submissions. In the given facts and circumstances, the delay, if any, stands condoned and application for condonation of delay is accordingly allowed.
6. The assessee is in appeal before us and has raised following grounds of appeal:
 1. *“The Appellate Order passed by the learned Commissioner of Income-tax (Appeals) Income Tax Department is unjustified, illegal and bad in law as the said Order is unilaterally passed and not served upon the Appellant as required under the provisions of the Income-tax Act, 1961.*
 2. *Confirmation of Addition to income by way of notional Income from Bungalow at Lonavala of Rs.16,80,000/- by the learned Commissioner of Income-tax (Appeals) Income Tax Department is unjustified, bad in law and in total disregard to the provisions of the IT Act as the said property has been used as a business asset.*



3. *Confirmation of Depreciation disallowance of Rs.56,60,945/- by the learned Commissioner of Income-tax (Appeals) Income Tax Department was against the provisions of Income tax law and hence illegal and bad in law.*
 4. *Confirmation of Disallowance of Rs.1,70,000/- alleged to be unexplained expenses u/s. 69C, pertaining to the maintenance of Lonavala property by the learned Commissioner of Income-tax (Appeals) Income Tax Department is unjustified and bad in law.”*
7. We have heard the Ld. DR, who relied upon the order of the lower authorities. None argued on behalf of the assessee. We have considered the submissions and perused the order of the lower authorities. The Ld. CIT(A) has dismissed the appeal ex parte observing in para no. 7 as under:
7. *“The facts of the case as noted above are that the appellant has not pursued the appeal despite being granted opportunities as elaborated above. No details, documents or submissions have been provided to come to any conclusion other than those arrived at by the assessing officer in the assessment order. During the appellate proceedings the appellant was given opportunities to put forth his case, but he did not upload any response despite service of notice(s). Considering all the facts and the circumstances of the case no interference with the assessment order of the AO is called for. The appellate proceedings cannot be allowed to be held hostage by dilatory tactics on the part of the appellant and a complete disdain for statutory notices. Therefore, I find no infirmity in the assessment order passed by the assessing officer u/s 144 of the Act dated 27.06.2019.”*
8. Section 250 sub section 2(a) of "the Act" provides as under:
- “Section 250 (2) The following shall have the right to be heard at the hearing of the appeal: -*



a. The appellant, either in person or by an authorised representative;”

9. It is thus evident that no effective hearing is given and the impugned order is not a reasoned order.
10. For the above reasons, the impugned order is not legally sustainable in the eyes of law and accordingly set aside. The matter is restored to the file of the Ld. CIT(A) for deciding afresh after affording reasonable opportunity of hearing to the appellant/assessee. The assessee is directed to present his case before the Ld. CIT(A) as and when called for.
11. In the result, appeal filed by the assessee is allowed in above terms for statistical purposes.

Order pronounced in the open court on 08.10.2024

Sd/-
(PRASHANT MAHARSHI)
(ACCOUNTANT MEMBER)

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

Mumbai / Dated 08.10.2024
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