

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH “B”, MUMBAI  
BEFORE SHRI. BR BASKARAN, ACCOUNTANT MEMBER  
AND  
SHRI. RAJ KUMAR CHAUHAN, JUDICIAL MEMBER  
ITA NO. 4832/MUM/2023 (A.Y: 2013-14)**

Manish Prakash Mutha  
9, Govind Building, Opp. Syndicate  
Bank, Station Road, Kalyan (W),  
Thane – 421301.  
**PAN: AQVPS2094K**

**(Appellant)**

Vs. DCIT, Circle 1  
DCIT, Circle 1, Thane, Room  
No. 22, 6<sup>th</sup> Floor, B Wing,  
Ashar IT Park, Road No. 16Z,  
Wagle Ind. Estate, Thane  
West, - 400604.

**(Respondent)**

**Assessee Represented by : None.**  
**Department Represented by : Shri. Ashok Kumar  
Ambastha, SR. AR.**  
**Date of conclusion of Hearing : 11.07.2024**  
**Date of Pronouncement : 10.10.2024**

**ORDER**

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

1. This appeal is filed by the appellant/assessee against the order dated 01.11.2023 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. 2013-14.

2. The facts in brief are that the Appellant is an individual and Proprietor of M/s. Mutha Constructions engaged in the business of Builders & Developers. The Appellant filed his Return of Income for A.Y. 2013-14 on 31.3.2015 declaring total income at Rs.44,91,066/-which included business loss of Rs.23,64,724/- and short-term capital gains of Rs.69,55,790/-. The Appellant's case was selected for scrutiny under CASS and notice U/s 143(2) was issued on 31.08.2015. Subsequently notice u/s 142(1) was issued to submit the preliminary documents. The appellant submitted copy of return of income, computation of income, Tax audit Report and other details called for during the assessment proceedings. During the year, he was engaged in construction of building on plot of land situated at Shahad, Kalyan (West). The said project was commenced in Feb 2009. The project was divided in to two parts: Sai Dham and Sai Icon. The construction of Sai Dham was completed in FY-2012-13 i.e. the AY under consideration While the construction related to the project SAI ICON was completed upto the plinth level only in the year under consideration.



3. The assessee is in appeal before us and has raised following grounds of appeal:

1. *“On the facts and circumstances of the case, the learned Commissioner of Income Tax (Appeal) erred in passing order u/s 250 of the Income Tax Act without appreciating the statement of Fact & Grounds of appeal filed by the appellant while filing an appeal before CIT(A).*
2. *On the facts and circumstances of the case, the learned assessing officer erred in estimating and allocating certain expenses on the basis of total construction cost incurred till 31.03.2013 in respect of both the projects where as the Sai Icon project was stand still after High court order and no construction activity was carried out.*
3. *On the facts and circumstances of the case, the learned Assessing officer erred in disallowing Rs 13,15,431/- and Rs. 16,97,430/- on account of expenses claimed against the 'Sai Dham Project' completed during the year presuming that certain expenses could have been incurred for other project i.e., 'Sai Icon' which was under construction and carried forward as CWIP on the estimated basis.”*

4. None appeared on behalf of the assessee. We have heard the Ld. DR and perused the impugned order. Para no. 5 of the impugned order is relevant and reproduced as under:

5. *“During the appellate proceedings, the appellant has only submitted submission in the form of ‘Statement of Facts’. After that neither he has replied to hearing notices nor submitted any documentary evidence/information to prove his side. Sufficient and adequate opportunities were afforded to the appellant as indicated at table at serial No. 5. No reply whatsoever has been submitted by the appellant. It can be safely presumed that the appellant is not interested in pursuing his appeal. Therefore, the undersigned sees no reason to interfere with the orders of the Assessing Officer. Thus, the ground of appeal raised by the appellant is dismissed.”*



5. It is evident from the order extracted above that the same has been passed without effective opportunity of hearing, as nothing is mentioned in the order whether the notices sent to the assessee were duly served or not?
6. 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;”*
7. 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) within the 60 days of this order.
8. In the result, appeal filed by the assessee is allowed in above terms for statistical purposes.

**Order pronounced in the open court on 10.10.2024**

**Sd/-**  
**(BR BASKARAN)**  
**(ACCOUNTANT MEMBER)**

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

Mumbai / Dated 10.10.2024  
Karishma J. Pawar, (Stenographer)



**ITA No. 4832/Mum/2023**  
**Manish Prakash Mutha; A.Y. 2013-14**

**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**