

**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. 1924/MUM/2024 (A.Y: 2017-18)**

Shri. Mickey Keki Mehta
D/2, Captain Colony, Opp. Hira
Panna, Hajiali, Tardeo, Mumbai -
400034.
PAN: AKIPM2171J

(Appellant)

Vs. Assistant Commissioner of
Income Tax Circle 22(2),
Mumbai.
315, Piramal Chambers,
Lalbaug, Parel, Mumbai –
400012.

(Respondent)

Assessee Represented by : Ms. Vinita Shah
Department Represented by : Shri. Dhiraj Kumar (Sr. DR.)
Date of conclusion of Hearing : 18.07.2024
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 19.02.2024 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. 2017-18, wherein the appeal has been dismissed on merit on the ground that the appellant has failed to respond to the notice issued on various dates as mentioned in para no. 5 of the order of the Ld. AO.

2. The brief facts of the case are that the appellant is an individual. The case was selected for scrutiny proceedings, and accordingly notices u/s. 143(2) and 142(1) of the Act were issued. During the course of Assessment proceedings, the Learned Assessing Officer asked the Appellant to explain the source of Cash deposit and credits in bank. In response to the same the Appellant submitted out of total credits in bank Rs.23,56,250/- and Rs.22,00,000/- are loan obtained from Smt. Daksha G Tanna and M/s. Raj construction. Thereafter, the Learned Assessing Officer passed Assessment Order u/s/144 of the Income Tax Act, 1961, Vide order dated 28.12.2019 assessing Total Income of Rs.45,46,151/- after making following additions: Addition of Rs. 14,79,000/- u/s.69A of the Income Tax Act, 1961 by treating cash deposit as alleged unexplained money. Addition of Rs.30,67,151/- u/s.68 of the Income Tax Act, 1961 by treating credits in bank as Unexplained Credits.



3. Aggrieved by the order of the Ld. AO, the appeal was filed before the Ld. CIT(A) who dismissed the appeal by passing the impugned order. The assessee is in appeal before us and has raised following grounds of appeal:

1. *“On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in passing the ex-parte order without granting sufficient opportunity of being heard to the appellant.*
2. *On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in confirming the action of the Learned Assessing Officer in making an addition of Rs.14,79,000/- u/s. 69A of the Income Tax Act 1961, by treating the cash deposits in bank as alleged Unexplained Money, without considering the facts and circumstances of the case.*
3. *On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in confirming the action of the Learned Assessing Officer in making an addition of Rs.30,67,151/- u/s.68 of the Income Tax Act 1961, by treating credits in bank as alleged Unexplained Credits, without considering the facts and circumstances of the case.”*

4. We have heard the Ld. AR on behalf of the assessee and Ld. DR on behalf of the revenue. At the very outset, it is argued that the impugned order has been passed ex-parte without affording opportunity to the appellant. It is argued that end of justice requires that an opportunity be given to the assessee/appellant to present his case before the Ld. CIT(A) and the impugned order be set aside and matter be restored to the file of the Ld. CIT(A).



5. The Ld. DR on the other hand defended the order of the Ld. CIT(A) stating that despite opportunity the appellant/assessee has failed to appear and make submissions/documents before the Ld. CIT(A).

6. Section 250 sub section 2(a) of "the Act" provides as under:

“(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. We have considered the rival submissions. The Ld. CIT(A) has mentioned in para no. 4 and 5 as under:

4. *“Submission:*

The Appellant has not submitted any details in the appellate proceedings inspite of giving sufficient opportunities to furnish or cause to be furnished Ground wise written submission, along with supporting documentary evidence(s) and/or documents as specified in the attached Annexure, if any. However, the Appellant has not furnished any details.

5. *Decision*

It is found from records that hearing notices were issued to the appellant as per the table below:

<i>Date of Notice</i>	<i>Date of hearing as per the Notice</i>	<i>Result</i>
<i>28/12/2020</i>	<i>12/01/2021</i>	<i>No details furnished nor any petition for</i>



		<i>adjournment was received.</i>
<i>26/08/2021</i>	<i>02/09/2021</i>	<i>No details furnished nor any petition for adjournment was received.</i>
<i>02/11/2022</i>	<i>17/11/2022</i>	<i>No details furnished nor any petition for adjournment was received.</i>

The conduct of the appellant, as inferred from the aforesaid table, evidences that the Appellant is not interested in prosecuting the appeal.”

8. It is settled law that no one should be condemned unheard and the adjudicating authorities are bound to follow the principal of natural justice. In this case, the contents of the order shows that the appellant was not given sufficient opportunity before the Ld. CIT(A) and in those circumstances the appellant/assessee needs to be given an opportunity for presenting his case before the Ld. CIT(A).
9. The impugned order is accordingly set aside and the matter is restored to the file of the Ld. CIT(A) for deciding the matter afresh after giving an opportunity to the assessee to present his case.



10. The assessee/appellant shall submit the necessary documents in support of his grounds of appeal before the Ld. CIT(A) within the period of 60 days from this order.
11. In the result, appeal filed by the assessee is allowed for statistical purposes in the above terms.

Order pronounced in the open court on 10.10.2024

Sd/-
(PRASHANT MAHARSHI)
(ACCOUNTANT MEMBER)

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

Mumbai / Dated 10.10.2024
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