



[hereinafter referred to as “*the Act*”] for the A.Y. 2013-14, wherein an ex parte order has been passed and assessment order has been confirmed.

2. The brief facts as culled out from the proceedings before the lower authorities are that no return of income was filed by the assessee for the A.Y. 2013-14; the case was reopened after issuing notice u/s. 148 of the Act dated 28.03.2019 which was served upon the assessee and in pursuance of the said notice, the assessee submitted return of income on 13.08.2019. Subsequently, notices u/s. 142(1) were issued on 16.09.2019, 16.10.2019 and 12.11.2019 and notice u/s. 143(2) of the Act dated 06.11.2019 were issued and served upon the assessee. The assessee filed reply to the notice u/s. 148 of the Act showing income from business and income from other sources and has claimed exempted long term capital gain of Rs. 2,73,65,564/-. Thus, best judgment assessment u/s. 144 of the Act was passed. Therein, an amount of Rs. 5,70,243/- being 2% of Rs. 2,85,12,168/- was added to the total income of the assessee. Penalty proceedings were also initiated. The said order was challenged in appeal before the Ld. CIT(A) who has dismissed the appeal vide impugned order. The assessee is in appeal before us and has raised following grounds:



1. *“The Ld. CIT(A), NFAC, erred in passing the Appellate Order without granting the appellant reasonable and effective opportunity of being heard.*
 2. *The Ld. CIT(A), NFAC, erred in not appreciating that the Ld. AO had made addition of Rs.2,85,12,168/- being entire sale proceeds of equity shares as unexplained credit under section 68 of the I T Act without appreciating the facts and circumstances of the case.*
 3. *Without prejudice to Ground No. 2, the Ld. CIT(A), NFAC, erred in not appreciating that in the case of sale of shares only surplus/ capital gains is liable to be taxed not the entire sale consideration and deduction has to be allowed for the cost of the shares sold.*
 4. *The Ld. CIT(A), NFAC, erred in not appreciating that the Ld. AO had made addition of Rs. 5,70,243/- on account of commission purely on imagination and conjectures without having any material to hold that the assessee had incurred such expenditure.*
 5. *The above grounds of appeal are without prejudice to one another.*
 6. *The appellant craves leave to furnish Additional Evidence which may be relevant to the above Grounds of Appeal in course of the appeal proceedings.”*
3. We have heard the Ld. AR on behalf of the assessee and Ld. DR on behalf of the revenue. The Ld. AR submitted that the impugned order is ex parte and no effective opportunity has been given to the assessee/appellant to present his case before the Ld. CIT(A) which has resulted into a miscarriage of justice and submitted that the matter may be restored to file of the Ld. CIT(A) and impugned order be set aside. The Ld. DR on the other hand relied upon the judgment of the Ld. CIT(A).



4. We have considered the submissions and examined the record. 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;”

5. It is evident from the provision that the hearing to be given is not a formality but an effective hearing is sine qua non for the purpose of upholding the principal of natural justice. We have examined the impugned order and in para no. 4 and 5 of the Ld. CIT(A) observed as under:-

4. *“Decision*

1. *The assessee was provided with multiple hearing opportunities to submit the documents in support of Grounds of Appeal along with documentary evidences, as mentioned below.*

<i>Sr. No.</i>	<i>Hearing Order date</i>	<i>Date of Compliance</i>	<i>Remarks</i>
<i>1.</i>	<i>30.12.2020</i>	<i>14.01.2021</i>	<i>Adjournment letter filed on 05.01.2021</i>
<i>2.</i>	<i>17.02.2023</i>	<i>23.02.2023</i>	<i>No response received</i>
<i>3.</i>	<i>07.08.2023</i>	<i>14.08.2023</i>	<i>No response received</i>
<i>4.</i>	<i>18.08.2023</i>	<i>25.08.2023</i>	<i>No response received</i>
<i>5.</i>	<i>04.09.2023</i>	<i>08.09.2023</i>	<i>No response received</i>
<i>6.</i>	<i>11.09.2023</i>	<i>15.09.2023</i>	<i>No response received</i>



In total 6 hearing opportunities were provided to the assessee. The assessee has failed to respond at multiple occasions. The above details show that the appeal has been fixed repeatedly and ample opportunities have been given to the appellant. It shows that the appellant is not serious to pursue his appeal.

2. *As the appellant has not provided any explanation or evidence in support of the grounds of appeal, so I am constrained to uphold the addition made by the assessing officer for want of explanation and documentary evidences as well as on merit too. In the circumstances, the grounds of appeal of the appellant are dismissed. The grounds of appeal of the appellant are dismissed.*
5. *Result*
In the result, the appeal is dismissed.”
6. It is thus evident from the above extract of the impugned order that since opportunities were provided for hearing by issuing notice, but there is nothing that the said notices issued were served or received by the assessee. Moreover, the decision in para no. 4 shows that it is not a reasoned order because the same has been passed without considering the explanation or evidence in support of the grounds in appeal by the appellant.
7. From these facts, we are of the considered opinion that the impugned order has been passed ex parte and is an unreasoned order and principal of natural justice has not been followed, for that reason the same is accordingly set aside. The matter is restored to the file of the Ld. CIT(A)



with the direction to decide afresh after giving opportunity of effective hearing to the assessee/appellant who shall present his case before the Ld. CIT(A) within 60 days from this order.

8. In the result, appeal filed by the assessee is allowed for statistical purposes in the above terms.

Order pronounced in the open court on 11.10.2024

Sd/-
(PRASHANT MAHARSHI)
(ACCOUNTANT MEMBER)

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

Mumbai / Dated 11.10.2024
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