

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH “B”, MUMBAI
BEFORE SHRI. PRASHANT MAHARSHI, ACCOUNTANT MEMBER
AND
SHRI. RAJ KUMAR CHAUHAN, JUDICIAL MEMBER
ITA NO. 2598/MUM/2024 (A.Y: 2017-18)**

Bhupendra Kumar Phoolchand Bind H No. 242, Flat No. 201, Dashrath Sadan Bharat Colony, Kamat Ghar, Thana Road, Bhiwandi – 421305. PAN: AKJPB4982B (Appellant)	Vs.	Income Tax Officer 1(1) Income Tax Department, Mohan Plaza, Wayale Nagar, Khadak Pada, Kalyan West, Thane – 421301. (Respondent)
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Assessee Represented by	:	Shri. Himanshu Gandhi, & Shri. Brijesh Vyas
Department Represented by	:	Shri. Ashok Kumar Ambastha – Sr. AR.
Date of conclusion of Hearing	:	29.07.2024
Date of Pronouncement	:	15.10.2024

ORDER

PER RAJ KUMAR CHAUHAN (J.M.):

1. This appeal is filed by the appellant/assessee against the order dated 01.05.2024 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 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 the appellant is an individual and had e filed his return of income for A.Y.2017-18 on 22.03.2018 declaring total income at Rs. 4,00,820/-. Notice u/s 143(2) dated 21.09.2018 was issued vide ITBA Portal and duly served on the assessee. Subsequently, a notice under section 142(1) dated 22.05.2019 was issued through ITBA Portal and same was duly served on the assessee. Due to change of incumbent, 142(1) of the Act was issued to the assessee on 11.07.2019 along with questionnaire requesting the assessee to explain the source of cash deposited in the Banks alongwith supporting documentary evidence but the assessee failed to submit his explanation. Again, a fresh notice u/s. 142(1) of the Act was issued on 07.10.2019. In response to the said notice assessee has not submitted any explanation. Again on 19.11.2019, the assessee was given a show cause notice as to why the assessment should not be completed as per the provisions of section 144 of the Act in absence of any reply. Thus, best judgment assessment u/s. 144 of the Act was passed. Therein, an amount of Rs. 5,70,243/- being 10% of Rs. 1,92,828/- 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. *“On the facts and circumstances of the case and law, the Ld. CIT(A) erred in passing ex-parte order and without adjudicating grounds of appeal on merit.*
2. *On the facts and circumstances of the case and law, the Ld. CIT(A) erred in confirming addition of Rs. 1,37,13,000/- under section 69A of Income Tax Act, 1961.*
3. *On the facts and circumstances of the case and law, the Ld. CIT(A) failed to consider that provisions of section 69A of Income Tax Act, 1961 are not applicable on deposits of cash received during the course of business of Money Transfer Activity carried on commission basis.*
4. *On the facts and circumstances of the case and law, the Ld. CIT(A) erred in confirming addition of business income of Rs.1,92,828/- on the presumed rate of 10% on amounts of deposit in bank account during the period other than demonetization period. ‘*
5. *On the facts and circumstances of the case and law, the Ld. CIT(A) erred in confirming charging of interest under section 234A and 234B of Income Tax Act, 1961.*
6. *On the facts and circumstances of the case and law, the Ld. CIT(A) erred in confirming invocation of Penalty provision under section 271AAC, 271B, 271A and 270A and 272A(1)(d) of Income Tax Act, 1961.*
7. *Appellant craves leave to add further grounds or to amend or alter the existing grounds of appeal on or before the date of hearing.”*



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 4.6 of the Ld. CIT(A) observed as under:-

4. *"During the course of appeal proceedings, following notices were issued to the appellant on different dates as mentioned below for*



submission of documents/explanation in support of grounds of appeal raised:

Sr. No.	Date of Notice	Compliance due date	Remarks
1.	28.01.2021	12.02.2021	Non-Compliance
2.	12.03.2024	20.03.2024	Non-Compliance
3.	29.03.2024	08.04.2024	Non-Compliance
4.	09.04.2024	19.04.2024	Non-Compliance

4.6 *It is trite that an appellant authority is essentially called upon to balance the two sides of an argument presented before him as held in Nirmal Singh and Others of the Hon'ble Punjab and Haryana High Court [Cr. No.3791 of 2013 (O&M) dated 01.05.2014]. The AO has passed the Assessment Order giving detailed findings. The appellant filed appeal against the impugned order and raised grounds of appeal. However, during the appellate proceedings, the appellant has not furnished any documentary evidence in support of facts submitted by him. Basically, mere raising of grounds of appeal is not sufficient to adjudicate the issues on merits. Therefore, in the absence of any reasonable, cogent and valid evidences/arguments/contentions advanced by the appellant in the instant appeal to counter the AO's decision as contained in Assessment Order, I am unable to interfere with the action of the Assessing Officer. Therefore, all the grounds raised by the appellant in the present appeal are 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 15.10.2024

Sd/-
(PRASHANT MAHARSHI)
(ACCOUNTANT MEMBER)

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

Mumbai / Dated 15.10.2024
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