

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "D" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
MS. KAVITHA RAJAGOPAL (JUDICIAL MEMBER)**

**ITA No. 4257/MUM/2024
Assessment Year: 2011-12**

Maqsood Ahmed Solanki,
357, Ebrahim Rehmatullah Road
Pydhonie,
Mumbai-400 003
PAN NO. AZRPS 2368 B
Appellant

ITO Ward 17(2)(3),
Mumbai.

Vs.

Respondent

Assessee by : Mr. Krish Desai
Revenue by : Mr. R.R. Makwana, Sr. DR

Date of Hearing : 17/10/2024
Date of pronouncement : 18/10/2024

ORDER

PER OM PRAKASH KANT, AM

This appeal has been preferred by the assessee against order dated 02.08.2024 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment year 2011-12, raising following grounds:

Ground: 1)The learned CIT (Appeal) issued notices on 29.01.2021, 11.07.2024 and 24.07.2024 however the said



notices were not communicated to the appellant due to technical issue therefore no response was submitted. Appellant pray to give a chance of hearing so he can submit the response.

2) The learned CIT (A) have erred without considering the fact and grounds of appeal. while doing so the learned CIT(A) amongst others failed to appreciate that: (a) The Appellant has made Cash deposit of Rs. 19,50,000/- from the available opening of cash Balance & withdraw from Bank A/c but the Learned A.O. has considered wrong Bank Balance on estimation basis and treated as unexplained Credit u/s 68. (b) The Appellant has submitted the details of sources of Fund (i.e. Cash and Loan Parties) from which the property is being purchased, the Ld A.O. did not appreciated the submission and raised the question on genuiness of the Submission and considered the Source of Fund as Unexplained credit

2. At the outset, the Ld. counsel for the assessee submitted the impugned order by the Ld. CIT(A) has been passed ex-parte without deciding the issue on merit and therefore, matter may be restored back for deciding afresh.

3. We have heard rival submission of the parties and perused the relevant material on record. The Ld. CIT(A) has decided the issue observing as under:

“4.2 During this appeal proceeding various notices were issued u/s 250 of IT ACT 1961 for hearing as under:

Date of sending hearing notice	Hearing date fixed	DIN	Remarks
29/01/2021	15/02/2021	ITBA/NFAC/F/APLJ/2020-21/1030185589(1)	Non compliance
11/07/2024	18/07/2024	ITBA/NFAC/F/APL_1/2024-25/1066601518(1)	Non compliance
24/07/2024	31/07/2024	ITBA/N FAC/F/APLJ /2024-25/1066976834(1)	Non compliance



The appellant has already been given three opportunities in past and on none of the occasion, the appellant submitted any response. There is no gainsaying that once the appeal is filed by the appellant, it is obligatory on its part to purposefully and cooperatively "pursue the same in a worthwhile manner, which the appellant has evidently failed to do,

4.3 From the above conduct of the appellant, it is evident that the appellant is no more interested in pursuing appeal. The Hon'ble Supreme Court in the case of CIT Vs B. N. Bhattacharjee and others [1979] 10 CTR 354 observe that preferring an appeal, means effectively pursuing it. Viewed thus, it is presumed that the appellant has no further cogent reasoning or/and evidence to substantiate the grounds taken in this impugned appeal. The onus is on person making the claim, and the primary responsibility/onus/burden for proving the claim made before the tax authorities (Assessing Officers/Appellate Authorities) lies with the assessee/appellant. In the present case, the appellant has not been able to even discharge the primary onus/burden statutorily & judicially cast upon him to substantiate the claims made in the grounds of appeal in spite of adequate time and opportunities given as .brought out in the above paras.

In view of above no deviation in the order of the AO is seen to be necessary therefore the order of the assessing officer passed under section u/s 143(3) r.w.s 147 of the I.T. Act, 1961 is upheld. Consequently, the grounds raised by the appellant are dismissed."

3.1 We find that though the assessee did not make any compliance of the notice of hearing sent by the Ld. CIT(A) but the Ld. CIT(A) under the provisions of section 250(6) of the Income-tax Act, 1961 (in short 'the Act') is required to pass a reasoned and speaking order on the grounds of appeal raised by the assessee even in case non-compliance on the part of the assessee. Therefore, we feel it appropriate to restore the matter back to him for deciding afresh. The assessee is directed to make compliance of the notices issued by the Ld. CIT(A). The grounds raised by the assessee are accordingly allowed for statistical purposes.



4. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 18/10/2024.

**Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER**

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;
Dated: 18/10/2024
Rahul Sharma, Sr. P.S.

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,
(Assistant Registrar)
ITAT, Mumbai