IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "K (SMC)" MUMBAI

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

ITA No. 3916/MUM/2024
Assessment Year: 2012-13

Viral Dilipbhai Shah, 51 Shreeji Bhavan, 76 Lohar Chawl, Mumbai-400 002. **PAN NO. ABAPS 7064 B** **Appellant**	**Vs.**	Ward 23(3)(6), Piramal Chamber, Dr. SS Rao Marg, Parel, Mumbai-400012. **Respondent**

Assessee by	:	Mr. Rajesh Shah
Revenue by	:	Mr. Tushar Mohite, 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 10.06.2024 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short 'the Ld. CIT(A)'] for assessment year 2012-13, raising following grounds:

1. On the facts and circumstances of the case, CIT(A) eared in passing an order without giving proper opportunity to the appellant to present

the case. The appellant may be provided with an opportunity to present the case. The order may be set aside.

2 a) On facts and circumstances of the case and in law the CIT(A) erred in not considering the all the grounds of appeal and passing an order in limine.

b) It is well settled law that the learned CIT(A) ought to have passed the order on merit of the case on the basis of available documents and submission.

3. The CIT(A) erred in passing an order without considering that due to Covid time the appellant could not make submission and then only one notice was issued. The order is passed without considering the material on record and on merit tough the CIT(A) has observed the order is passed on merit.

4. On facts and circumstances of the case and in law, the CIT(A) erred in confirming full value of the sale proceedings under section 68 of the act at Rs.39,68,477 though the appellant declared correctly Short Term Loss of Rs.20,734.

5. On facts and circumstances of the case and in law the CIT(A) erred in not considering that transaction value cannot be Income.

6 a) On facts and circumstances of the case and in law the CIT(A) erred in not considering the ground that no expenditure was incurred of Rs.79,370 which was purely added without any basis.

b) On facts and circumstances of the case and in law the addition was wrongly made and without any basis.

7. I The appellant craves leave to add, amend, modify, cancel and or substitute any of the grounds of the appeal.

2. At the outset, before us the Ld. counsel for the assessee submitted that the impugned order of ld CIT(A) has been passed *ex-parte* qua the assessee without deciding the issue on merit and therefore order of the Ld. CIT(A) might be set aside.

3. We have heard rival submission of the parties and perused the relevant material on record. The finding of the Ld. CIT(A) on the issue in dispute is reproduced as under:

"2. The case was taken up for hearing and notices u/s 250 of the Act, were issued on 24/12/2020 and 19/01/2021 fixing the case for furnishing written submission. In response to these notices the Appellant has not made any submission. Again a notice was issued on 13/05/2024. The Appellant has not responded or provided any alternative address. In such condition I have no option but to decide the case on merits on the basis of records available with this office.

3. It is observed from the records that the appellant was provided multiple opportunities of being heard by way of issue of hearing notices. But appellant has not responded to the said notices. From the non responding conduct of the appellant it may be concluded that he is not interested in completing the appeal proceedings. To reach the finality of this appeal the following judgments are refer to :

3.1 The law aids those who are vigilant, not those who sleep upon their rights. This principle is embodied in the well known Latin dictum, "VIGILANTIBUS ET NON DORMIENTIBUS JURA SUB VENIUNT". The conduct of the Appellant, evidences that the Appellant fails on this principle of equity. Even the Hon'ble courts, in various pronouncements, have frowned upon the Appellants who file appeals but thereafter do not take any further interest in prosecuting those appeals.

3.2 The Hon'ble Income Tax Appellate Tribunal - Kolkata in the case of Pradeep Kumar Jhawar Kolkata vs. DCIT - CC - XXI (15 March, 2016) (ITA Nos. 450/Kol/2013 for Asstt. Year 2006-07) dismissed the appeal of the Appellant for non - prosecution.

The Hon'ble Madhya Pradesh High Court in the case of Estate of Late Tukojirao Holkar vs. CWT (223 ITR 480) held as under:

> *" If the party, at whose instance the reference is made, fails to appear at the hearing, or fails in taking steps for preparation of the paper books so as to enable hearing of the reference, the court is not bound to answer the reference."*

Similarly, the Hon'ble Punjab & Haryana High Court in the case of New Diwan Oil Mills vs. CIT [(2008) 296 ITR 495] returned the reference unanswered since the assessee remained absent and there was no assistance from the assessee.

3.4 Considering the above, it is clear that the Appellant is not aggrieved with the impugned order and not keen on pursuing this appeal. Hence I compel to proceed to decide the appeal based on the records available in my office and on merit of the case.

Considering the records and merits of the case I have left with no option but to dismiss this appeal."

3.1 We find that the assessee did not comply to the notices issued by the Ld. CIT(A) however under the provisions of section 250(6) of the Income-tax Act, 1961 (in short 'the Act'), the Ld. CIT(A) is required to pass a speaking and reasoned order on the grounds of appeal raised before him by the assessee , even in absence of any submission by the assessee. Since, the Ld. CIT(A)has not decided the issue on merit raised in the grounds and therefore we feel it appropriate to set aside the order of the Ld. CIT(A) and restore the matter back to him for deciding afresh after considering the submission of the assessee. The assessee is also directed to comply the opportunity of hearing which shall be provided by the Ld. CIT(A). The grounds of appeal 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/-	Sd/-
(KAVITHA RAJAGOPAL)	**(OM PRAKASH KANT)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

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

<u>Copy of the Order forwarded to</u> :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

//True Copy//

(Assistant Registrar)
ITAT, Mumbai