

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH “SMC”, MUMBAI
BEFORE SHRI. NARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER
AND**

**SHRI. RAJ KUMAR CHAUHAN, JUDICIAL MEMBER
ITA NO. 3888/MUM/2024 (A.Y.: 2012-13)**

Aspect bullion Refinery Pvt. Ltd. C-803, 8th Floor, C-Wing, Maathon Nextgen Realty, Ganpatrao Kadam Marg, Lower Parel (West), Mumbai – 400013.	Vs.	Income Tax Officer – Central Circle 8(4) 6 th Floor, Aaykar Bhavan, Mumbai – 400020.
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PAN: AAHCM2136R
(Appellant)

(Respondent)

Assessee Represented by	:	None
Department Represented by	:	Shri. Ram Prakash Rastogi, Sr. DR.
Date of conclusion of Hearing	of : 03.10.2024	
Date of Pronouncement	:	23.10.2024

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), ADDL/JCIT (A)-2 Jaipur [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. 2012-13, 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 assessee has filed return of income for A.Y. 2012-13 on 21.09.2012 declaring total income of Rs. Nil. The return was processed u/s. 143(1) of the Act. The return was not selected for scrutiny u/s. 143(2) of the Act. Assessment proceedings u/s. 147 of the Act were initiated on 31.03.2019 in the case of the assessee for A.Y. 2012-13 and a notice u/s. 148 of the Act was accordingly issued to the assessee on 31.03.2019. In response to the notice the assessee filed the return of income on 06.08.2019 declaring Nil income. A notice u/s. 142(1) dated 10.06.2019 was issued to the assessee calling for specific details mentioned therein. Subsequently, another notice u/s. 142(1)



was issued on 01.10.2019 calling for the same details which were not furnished in terms of the previous notice. Accordingly, assessee was assessed for total income at Rs. 5,04,446/-.

3. 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. *Ground No.1:*

On the facts and in the circumstances of the case and in law, the Learned CIT(A) has passed the order without providing sufficient opportunity of being heard.

2. *Ground No.2:*

On the facts and in the circumstances of the case and in law, the Learned CIT(A) has erred in confirming the addition of Rs.5,04,416/- by invoking provisions of section 2(22)(e) of the Act. The appellant company pray that said addition may please be deleted.

3. *Ground No.3:*

On the facts and in the circumstances of the case in law the order passed by the Ld. AO is not tenable and warranted in law. The Ld. A.O. erred in reopening the assessment u/s. 147 by issue of notice u/s 148 dated 31.03.2019 which is barred by limitation in view of the first proviso to section 147 of Income Tax Act, 1961.

4. *Ground No.4:*



The Learned assessing officer erred in considering the explanations given by the Appellant in connection to the advances received during the year.”

4. None appeared on behalf of the assessee. We have heard the Ld. DR on behalf of the revenue. The Ld. DR supported the order of the Ld. CIT(A) and submitted that the assessee has failed to present his case before the Ld. CIT(A) and there is no merit in appeal.

5. 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;”

6. 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. 2 and 2.1 of the Ld. CIT(A) observed as under: -

2. *“During the appellate proceedings, the notices of hearing u/s 250 were issued electronically*



through ITBA. In this case, the appellant was given various opportunities of being heard both before & after the appeal migrated to the NFAC as per details given below: -

<i>Sr. No.</i>	<i>Hearing Order date</i>	<i>Date of Compliance</i>	<i>Remarks</i>
<i>1.</i>	<i>18.01.2021</i>	<i>02.02.2021</i>	<i>Adjournment request received.</i>
<i>2.</i>	<i>07.12.2023</i>	<i>14.12.2023</i>	<i>Adjournment request received.</i>
<i>3.</i>	<i>02.02.2024</i>	<i>09.02.2024</i>	<i>No written submission filed and no adjournment application received.</i>

2.1 Despite being provided with numerous opportunities the appellant only filed adjournment but not made any written submissions till date. Therefore, I find that in this case sufficient number of opportunities have already been granted to the appellant, which it has failed to avail. Hence, the appeal is being decided on the basis of material on record.”

7. It is evident from the para no. 2 and 2.1 of the impugned order extracted above that the appeal has been adjudicated/ disposed off ex parte.

8. For the above reasons, the impugned order is not legally sustainable in the eyes of law and accordingly set aside. The



matter is restored to the file of the Ld. CIT(A) for deciding afresh after affording reasonable opportunity of hearing to the appellant/assessee. The assessee is directed to present its case before the Ld. CIT(A) before the Ld. CIT(A) within the 60 days of this order.

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

Order pronounced on 23.10.2024

Sd/-
(NARENDRA KUMAR BILLAIYA)
(ACCOUNTANT MEMBER)

Mumbai / Dated 23.10.2024
Karishma J. Pawar, (Stenographer)

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

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