

**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. 3887/MUM/2024 (A.Y: 2017-18)

Ojashvee Exim Private Vs. Dilip Prasad Ward
Limited 15(2)(4)

202, Vrindavan Building, Room No. 360, 3rd Floor,
Opp IIT Main Gate, Powai – Aayakar Bhavan,
400076. Mahirshi Karve Road,

PAN: AAACOO474D

Mumbai – 400020.

(Appellant)

(Respondent)

Assessee Represented by : None

**Department Represented by : Shri. Ram Prakash
Rastogi, Sr. DR**

Date of conclusion of : 03.10.2024

Hearing

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 25.06.2024 of Learned Commissioner of



Income Tax (Appeals), ADDL/JCIT (A) Ranchi [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 assessee company dealing in paper and paper product items and school stationery items e.g. School note books, white and colour chalks, etc. Above items used in school classes black board, and also, the assessee is dealing in other raw materials used in offset printing machine rubber blankets, printing Ink, sponge, cotton, benzene, etc. The appellant had filed its Return of Income for the Assessment Year 2017-18 on 06.11.2017 declaring total income of Rs. 7,74,970/-. The case was selected for scrutiny. Notice u/s 143(2) of the Act issued on 09.08.2018. Later on, notices u/s 142(1) of the Act issued on 09.09.2019 and 16.11.2019 for the explanation of the deposit amount. A final show cause notice was issued on 03.12.2019



and asked why the deposit amount of Rs. 92,00,000/- [Rs. 90,00,000/- in old currency and Rs. 2,00,000/- in new currency] should not be computed u/s 68 of the Act. The appellant had neither responded nor submitted any kind of documentary evidence in support of his claim. The Ld. AO has therefore raised a demand of Rs. 64,66,357/-.

3. Aggrieved by the impugned order of the Ld. AO. The appeal was filed before the Ld. CIT(A) who dismissed the appeal by passing the impugned order. The assessee is in appeal before us against the impugned order of the Ld. CIT(A).
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. 7 to 10 of the Ld. CIT(A) observed as under:-

7. “Before adjudicating on the grounds of appeal of the case, it is pertinent to mention here that the records of the proceedings of this office as narrated below shows that more than due opportunities were given to the appellant and rules of natural justice were duly adhered to. A number of opportunities were given to the appellant. Details of notices sent are as follows:-

Sr. No.	Date of Notice/Letter	Date of fixing the case for hearing	Remarks
1.	03/12/2020	10/03/2021	Notice was sent to appellant through ITBA portal. No reply has been received from the appellant till date.
2.	12/04/2022	27/04/2022	Notice was sent to appellant through ITBA



			portal. The appellant had responded on 23/04/2022.
3.	02/02/2023	17/02/2023	Notice was sent to appellant through ITBA portal. No reply has been received from the appellant till date.
4.	20/05/2023	05/06/2023	Notice was sent to appellant through ITBA portal. No reply has been received from the appellant till date.
5.	07/07/2023	17/07/2023	Notice was sent to appellant through ITBA portal. No reply has been received from the appellant till date.
6.	29/05/2024	04/06/2024	Notice was sent to appellant through ITBA portal. No reply has been received from the appellant till date.

8 As is evident from the above chart, the appellant has been given adequate opportunities on various occasions. However, no written submission was filed by the appellant till now on the portal. The



appeal has been filed almost 4 years ago and this should have been sufficient time for the appellant to prepare a reply on the issues raised.

9. *I have gone through the available records and found that the appellant has not filed any evidence/additional evidence in support of the genuineness of the deposit of Rs. 92,00,000/-. In light of the above details of non-compliance and non-pursuance of appeal, reference is made to the following judicial ruling of the Hon'ble Apex Court. In CIT vs. B.N. Bhattacharjee (1977) 118 ITR 461(SC), the Hon'ble Supreme Court while dealing with the issue of pursuing of appeal has stated that "preferring an appeal means more than formally filing it but effectively pursuing it". The Hon'ble ITAT, Delhi, in CIT vs. Multiplan India Pvt. Ltd., as reported in 38 ITD 320 (Delhi), when faced with a similar situation of non- pursuing of appeals dismissed the appeal of Revenue. The law assists those who are vigilant and not those who sleep over their rights. This principle is embodied in the following maxim- "vigilantibus non dormientibus jura subveniunt". In view of the above, it is clear that the appellant is not interested in pursuing this appeal. Therefore, the appeal filed by the appellant is dismissed.*

10. *In the result, appeal is treated as dismissed."*

7. It is evident from the para no. 9 and 10 of the impugned order extracted above that the appeal has been adjudicated and disposed off ex parte.



8. From these facts, we are of the considered opinion that the impugned order has been passed ex parte and is not a reasoned 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.
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)

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

Mumbai / Dated 23.10.2024
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