

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH “C”, MUMBAI
BEFORE SHRI. OM PRAKASH KANT, ACCOUNTANT
MEMBER
AND**

SHRI. RAJ KUMAR CHAUHAN, JUDICIAL MEMBER

ITA NO. 3564/MUM/2024 (A.Y: 2012-13)

Parmar Buildtech	Vs.	DCIT – 42(1)(1)
1, Shree Hari (Parmar) Indl Estate, Opp. SVI School, Parekh Nagar, Kandivali, (W), S.O. Mumbai – 400067.		Range 431, Circle 42(1)(1),

PAN: AAJFP2574P

(Appellant)

(Respondent)

Assessee Represented by	:	Shri. Satyaprakash Singh
Department Represented by	:	Smt. Pradnya R. Gholap (Sr. DR).
Date of conclusion of Hearing	:	22.08.2024
Date of Pronouncement	:	24.10.2024

ORDER

PER RAJ KUMAR CHAUHAN (J.M.):

1. This appeal is filed by the appellant/assessee against the order dated 20.05.2024 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. 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 had filed original return of income for A.Y. 2012-13 on 31.03.2013 declaring total income of Rs. 10,11,640/-. The said return of income was processed u/s. 143(1) of the Act dated 31.03.2015 assessing total income of the assessee at Rs. 10,11,640/-. Subsequently, the assessment completed u/s. 143(3) of the Act dated 31.03.2015 was set aside by the Pr. CIT-33, Mumbai vide order passed u/s. 263(1) of the Act, dated 02.11.2016 for specific verification of issues mentioned in the order. Accordingly, notice u/s. 142(1) dated 11.08.2017 with specific questionnaire was issued to the assessee duly served to assessee for compliance. The notice was sent to the



assessee to the email id of the assessee provided in its latest return of income filed. As per the notice, hearing was fixed on 17.08.2017, however, assessee neither attended nor furnished the details called for. A final show cause notice u/s. 142(1) of the Act dated 21.08.2017 was issued to assessee. The same was duly served to assessee and also sent to the email id of the assessee on 22.08.2017. The assessee has filed its submission vide letter dated 22.08.2017. The Ld. AO computed the total income at Rs. 3,31,64, 350/- and made various additions as mentioned therein.

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. *“The Hon'ble CIT(A) / National Faceless Appeal Centre has passed its order dated 20.05.2024 without providing a proper opportunity of being heard which is against the principles of natural justice.*
2. *On the facts and in the circumstances of the case and in law the Ld. A.O. has failed to consider that the order u/s 143(3) of the Act dated 31.03.2015 has been passed by AO after applying his mind proper enquiry and examination of accounts. The appellant prays before your Honour to*



kindly consider the proceedings u/s 263 of the Act as invalid.

3. *On the facts and in the circumstances of the case and in law the learned A.O. erred in rejection of Gross profit and computing the net profit of Rs. 51,83,014/- @ 4 percent of sales and the Hon'ble CIT(A) / National Faceless Appeal Centre erred in upholding the same. The appellant prays that the said disallowance may please be deleted.*
5. *On the facts and in the circumstances of the case and in law the learned A.O. erred in disallowing the Interest expenses of Rs. 3,17,367, u/s. 40(a)(ia) of the Act and the Hon'ble CIT(A) / National Faceless Appeal Centre erred in upholding the same. The appellant prays that the said disallowance may please be deleted.*
4. *On the facts and in the circumstances of the case and in law the learned A.O. erred in disallowing the premium paid of Rs. 8,08,531 on cancellation of Gala and the Hon'ble CIT(A) / National Faceless Appeal Centre erred in upholding the same. The appellant prays that the said disallowance may please be deleted.*
5. *On the facts and in the circumstances of the case and in law the learned A.O. erred in treating the business income of Rs. 69,32,918/- as other income under the head income from other sources and the Hon'ble CIT(A) / National Faceless Appeal Centre erred in upholding the same. The appellant prays that the said disallowance may please be deleted.*
6. *On the facts and in the circumstances of the case and in law the learned A.O. erred in treating the advances of Rs. 1,76,25,518/- as unexplained cash credits u/s 68 of the Act and the Hon'ble CIT(A) / National Faceless Appeal Centre erred in upholding the same. The appellant prays that the said disallowance may please be deleted.*
7. *On the facts and in the circumstances of the case and in law the learned A.O. erred in treating the 10% of the advances of Rs. 1,28,53,653/- received from customer as for non-business purposes, i.e. Rs. 12,85,365/- and the Hon'ble CIT(A) / National Faceless Appeal Centre erred in*



upholding the same. The appellant prays that the said disallowance may please be deleted.

8. *On the facts and in the circumstances of the case and in law the learned A.O. erred in initiating penalty proceedings u s 271(1)(c) of the act and the Hon'ble CIT(A) / National Faceless Appeal Centre erred in upholding the same. The appellant prays that the said proceedings may please be deleted.”*

4. 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).

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.

The Ld. CIT(A) has mentioned in para no. 7 as under:

7. “Ground 7 objects to addition of rs. 1,76,25,518/- u/s 68. Despite providing opportunity to the assessee, the assessee could not produce the proof regarding the creditworthiness of the persons concerned, their identity and genuineness. Under these circumstances and for the reasons stated by the AO in para 6 of the assessment order, the addition of Rs.1,76,25,518/- u/s. 68 is confirmed.”

7. It is evident from the para no. 6 of the impugned order extracted above that the appeal has been adjudicated/ 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 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 its 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 24.10.2024

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

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

Mumbai / Dated 24.10.2024
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