

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH “SMC”, MUMBAI
BEFORE SHRI. BR BASKARAN, ACCOUNTANT MEMBER
AND
SHRI. RAJ KUMAR CHAUHAN, JUDICIAL MEMBER
ITA NO. 3570/MUM/2024 (A.Y: 2018-19)**

Navin Ramesh Manshani Vs. ITO Ward 42(1)(3)
B-503, Shivdham Shivkupa CHS, Kautilya Bhavan, Mumbai –
Saibaba Mandir, Satya Nagar, 400051.
Borivali (W), Mumbai – 400092.

PAN: AJKPM2138G

(Appellant)

(Respondent)

Assessee Represented by	:	Shri. Vimal Punmiya
Department Represented by	:	Ms. Smitha V. Nair
Date of conclusion of Hearing	:	05.11.2024
Date of Pronouncement	:	.11.2024

ORDER

PER RAJ KUMAR CHAUHAN (J.M.):

1. This appeal is filed by the appellant/assessee against the order dated 17.11.2023 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. 2018-19, wherein the Ld.



CIT(A) has dismissed the appeal ex parte to decide the issue on merit as appellant/assessee has failed to file any response before the Ld. CIT(A).

2. The facts in brief are that the assessee is an individual and is engaged in the business of Trading in Electrical parts and accessories and has filed return of income on 13.10.2018 declaring total income of Rs. 16,11,790/-. The said return was processed and intimation order u/s. 143(1) dated 13.12.2018 was passed. Subsequently, the return of income was selected for scrutiny. The notice u/s. 143(2) dated 29.09.2019 and also notice u/s. 142(1) on 20.01.2021 were issued to which submission was made by the appellant. Further details/explanation were called by the Ld. AO u/s. 142(1) regarding sale of property and further the appellant was called upon to explain the difference in stamp duty and value of and the agreement value of purchase consideration of the shop through the notice u/s. 142(1). The necessary documents were submitted by the appellant. Another show cause notice u/s. 143(3) on 17.03.2021 was issued but was sent on the email id which does not belong to the appellant. Therefore, the appellant was not aware of the show cause notice dated 17.03.2021, wherein he was instructed to submit the explanation before 19.03.2021, but the appellant was detected with Covid-19 on 15.03.2021 and remained



quarantined. The assessment order u/s. 143(3) was passed on 20.03.2021 stating that the appellant has nothing to submit against the show cause notice but the appellant was not aware of the show cause notice having been issued. Further, sufficient opportunity was not given to the appellant to respond to the show cause notice and assessment was closed on 20.03.2021. The assessment order u/s. 143(3) dated 20.03.2021 had added income u/s. 56(2)(x) of the Act of Rs. 6,60,300/- without affording opportunity of making submission by the appellant.

3. The appellant challenged the assessment order before the Ld. CIT(A) and the impugned order has been passed ex parte because various notices 5 times issued from 30.09.2021 to 06.11.2023 was not responded or not replied by the appellant as find mentioned in para no. 3 of the impugned order. The Ld. CIT(A) concluded by observing “the appellant has been given opportunity for last 2 years, however, there has been total non compliance to all the notices issued. So, the contentions raised vide grounds of appeal and the statement of facts cannot be taken on face value. Therefore, the above contention of the appellant are without merit and are hereby rejected and the appeal was dismissed.”



4. Aggrieved by the impugned order, the assessee is in appeal before us and has raised following grounds of appeal.

- “01. On the facts and in the circumstances of the case and in law the learned Commissioner of Income Tax (Appeal) erred in confirming addition made by the learned Assessing Officer of Rs.660300/- under section 56(2)(x) of the Act. Provisions of the Act ought to have been properly construed and regard being had to facts of the case addition of Rs.660300/- should not have been confirmed.*
- 02 On the facts and in the circumstances of the case and in law the learned Commissioner of Income Tax (Appeal) ought to have appreciated that difference of Rs.660300/- between agreement value and value adopted by Stamp duty Authority is only 7.05% of agreement value, which is within the safe harbour limit of 10% as provided in section 56(2)(x) of the Act.*
- 03. On the facts and in the circumstances of the case and in law the learned Commissioner of Income Tax (Appeals) erred in confirming order made under section 143(3) of the Act by the learned Assessing Officer which is illegal, bad in-law, ultra vires, without jurisdiction and without allowing reasonable opportunity of the hearing, without appreciating facts, submission and evidences in their proper perspective is liable to be annulled.*
- 04 The learned Commissioner of Income Tax (Appeals) erred in confirming charging of interest under section 234A, 234B, 234C and 234D of the Act.”*

5. We have heard the Ld. AR on behalf of the assessee and Ld. DR on behalf of the revenue. The Ld. DR supported the order of the Ld. CIT(A) stating that the assessee was negligent and has failed to respond and has not filed any reply or submission either before the Ld. AO or before the Ld. CIT(A).



6. The Ld. AR on the other hand argued that the proceedings by both the lower authorities have taken place during covid period and the assessee has suffered covid and remained quarantined. Further, there is no proof that there is notice issued by the Ld. CIT(A) has been duly served upon the assessee. It is argued that the assessee was prevented by sufficient cause from presenting its case before the lower authorities and therefore the matter may be restored to the file of the Ld. AO for providing opportunity to the assessee to present its case.

7. We have considered the rival submissions. 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;”

8. It is evident from the assessment order as well as from the impugned order that both the orders are ex parte. It is to be noticed that there is sufficient justification given by the assessee/appellant for his failure to present his case before the lower authority as discussed above. In the



given facts and circumstances the end of justice requires that the assessee/appellant needs to be given an effective opportunity of hearing for presenting its case before the Ld. AO.

9. For these reasons, the impugned order of the Ld. CIT(A) is set aside and matter is restored to the file of the Ld. AO with the direction to provide an effective opportunity of hearing to the appellant/assessee who shall present its case before the Ld. AO without any delay, as and when he is called upon by the Ld. AO in that regard.
10. In the result, appeal filed by the assessee is allowed for statistical purpose in the above terms.

Order pronounced on 08.11.2024

Sd/-
(BR BASKARAN)
(ACCOUNTANT MEMBER)

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

Mumbai / Dated 08.11.2024
Karishma J. Pawar, (Stenographer)

Copy of the Order forwarded to:



ITA No. 3570/Mum/2024
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1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mumbai