

**IN THE INCOME-TAX APPELLATE TRIBUNAL "D" BENCH,  
MUMBAI**

**BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER  
&  
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER**

**ITA No.5010/MUM/2024  
Assessment Year: 2011-12**

<b>Dinesh Ghanshyam Jani</b> 19/21, 4 <sup>th</sup> Floor, Bora Bazar Street Fort, Mumbai - 400001 Maharashtra <b>PAN: ACNPJ3582D</b>	Vs.	<b>DCIT</b> DCIT-4(3)(1), Mumbai, Maharashtra
(Appellant)		(Respondent)

Appellant by :	Shri Sharwan Kumar Jha
Respondent by :	Shri R.R. Makwana, Sr. DR

Date of Hearing	13.11.2024
Date of Pronouncement	21.11.2024

**आदेश / O R D E R**

**PER PRABHASH SHANKAR [A.M.] :-**

The present appeal has been filed by the assessee, which emanates from the appellant order passed by the Ld. CIT(A)/Commissioner Of Income Tax, Appeal, CIT(A) 49, Mumbai, with regard to the assessment order passed under section 144 of the Income Tax Act 1961, (in short 'the Act') for the A.Y. 2011-12.

2. The Assessee has raised following grounds of appeal :

- "1. The amount Rs. 14,47,700/- is taxed at maximum marginal rate. Considering the facts and circumstances of the case and in law prevailing on the subject the reassessment proceeding is not in accordance with the law and the



*provisions of the Income Tax Act, 1901. The assessee submits that the reassessment proceedings be held to be bad in law and struck down.*

2. *The reassessment proceedings u/s. 148 r.w.s. 144 of the Income tax Act in any view of change of opinion on the same facts and circumstances which were already in A. O's knowledge even during the original assessment proceedings.*
3. *The Ld. CIT while upholding addition and the Ld. AO while making assessment u/s. 143(3) r.w.s. 147 having made specific enquiries with regard to the addition by way of show cause to assessee company and in response to which the assessee has furnished all the relevant documents, considering this material, A.O. having completed the assessment it cannot be said that income has escaped assessment on account of failure on the part of assessee company to disclose fully and truly all the material facts assessment after expiry of four years from the end of the relevant assessment was invalid.*
4. *Without conducted any enquiry by the Ld. CIT Appeal addition was upheld which is bad in law because, in any view, specific mention by the A.O. in the reasons recorded for reopening the completed assessment of the failure of the assessee to disclose fully and truly all material facts necessary for the assessment, is the sine qua for assuming jurisdiction u/s.147 of the Act in a case falling under the proviso thereto and in the absence thereof makes the action taken by the A.O. wholly without jurisdiction.*
5. *The approval taken from the higher authority u/s 151 is in mechanical manner hence, the re-assessment proceeding is impugned.*
6. *The Ld. CIT Appeal upheld without any merits under the circumstances the passed appeal order is liable to be quashed.*
7. *That the Appeal order passed by the Ld. CIT is bad in law in as much as passed violating the interest in justice without providing the copy of statement and opportunity of cross examination of the witnesses on which statement the Ld. AO has relied upon is bad in law and hence passed assessment order to be quashed.*
8. *Assessed u/s. 144 rws 147 of the I.T. Act, 1961. Tax on the above income is calculated as per ITNS 150 forming part of this order. Credit for prepaid taxes is given after due verification. Interest u/s 234A, 2348, 2340 & 234D of the 1.T. Act, 1961 as applicable is charged. D.N./Challan is accordingly issued. Notice u/s 274 r.w.s 271(1)(c) of the Income Tax Act, 1961 is issued.*
9. *The appellants craves leave to add to alter, amend, modify and/or delete any or all of the above said grounds of appeal. The appellants reserve its right to file further submission in the appeal."*

3. It may be stated here that there is delay in filing of appeal by the assessee. It is submitted that the he did not receive the appeal order,



through any medium, including the e-filing portal, email, or postal address. As a result, he submitted a request for certified copies of the proceedings dated 18.07.2014 from the Learned CIT(A). The certified copies were eventually provided to the Appellant on **August 14, 2024** vide letter dated 14.08.2024. Consequently, he filed appeal on 26.09.2024. Therefore, there is sufficient cause for filing of belated appeal hence it is prayed that the delay may be condoned and the appeal may be treated as filed on due time. The prayer of the assessee has merits and delay is condoned.

4. Facts of the case are that the assessee filed his return of income for the year under consideration u/s. 139(1) of the Act on 29/09/2011, declaring total income of Rs.14,47,760/-. Subsequently, proceedings u/s.147 of the Act were initiated by issue of a notice u/s.148 of the Act on 28/03/2018, and the said notice was duly served on the appellant on 29/03/2018. However, the appellant did not file any return of income in response to the said notice issued u/s.148 of the Act. Further, there was no response from the appellant to the various notices issued by the AO u/s.142(1) of the Act during the assessment proceedings also. Accordingly, the AO completed the assessment u/s. 144 read with Section 147 of the Act vide order dated 28/12/2018, wherein the total income of the appellant for the year under consideration was assessed at Rs.1,47,47,760/-, after making an addition of Rs.1,33,00,000- as undisclosed income. Appeal was filed against the said order dated 28/12/2018 passed by the AO u/s. 144 read with Section 147 of the Act. However, even in the appeal proceedings, assessee has not furnished any explanation in this regard. There is a finding of the Investigation Wing of the Department that Mr. Chandrakant Patel was indulging in providing accommodation entries and that he had provided such an accommodation entry to the appellant. The appellant's non-cooperation during assessment proceedings as well as the appellate proceedings only strengthens the above finding. Therefore, considering the overall facts and circumstances of the case, the action of the AO in taxing the amount of Rs. 1,33,00,000/- in hands of the appellant as undisclosed income for the year



under consideration cannot be faulted. The addition made was accordingly upheld by the Id.CIT(A).

5. When the case was called for hearing the Id.AR of the assessee specifically requested for sending back the case to the Id.AO as no substantive hearing could take place either before him or the CIT(A).It is apparent that both the authorities have allowed adequate opportunity of hearing to the assessee which was not availed. Such a non-cooperative attitude cannot be appreciated. However, it is also true that the issues in hand could not be adjudicated on account of non compliance by the assessee. We take note of the request of the Id.AR sympathetically in the interest of justice and fair play who has pleaded for restoring the matter and has also assured making necessary compliance to the authorities. The provisions of the Act are not penal in nature and any bonafide omission on part of the assessee should not be used against it. Therefore, a last opportunity of hearing is allowed to him to make proper representation before the authorities. The Id. Assessing officer shall give proper and adequate opportunity of being heard to the assessee in accordance with principles of natural justice in the set aside proceedings for de novo assessment. Needless to state, the assessee will comply with notices and any details sought by the assessing authority without fail, as it will not be allowed any further opportunity of hearing in case of any further non-compliance.

6. In the result, the appeal of the Assessee is **allowed for statistical purposes.**

Order pronounced in the open court on 21/11/2024.

Sd/-

**BEENA PILLAI**

(न्यायिक सदस्य / JUDICIAL MEMBER)

Sd/-

**PRABHASH SHANKAR**

(लेखाकार सदस्य / ACCOUNTANT MEMBER)



Place: मुंबई/Mumbai  
दिनांक /Date 21.11.2024  
Lubhna Shaikh / Steno

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1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,  
Mumbai
5. गार्ड फाईल / Guard file.

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