

**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. 2488/MUM/2024 (A.Y: 2011-12)**

Thomas John Gomes 1, Rosy Building, Tank Lane, Daftary Road Malad (East), Mumbai – 400097. PAN: AADPG3215G (Appellant)	Vs.	Income Tax Department (NFAC) National Faceless Appeal Centre – Delhi. (Respondent)
--	------------	---

Assessee Represented by	:	Shri. G. R. Kabra & Co.
Department Represented by	:	Shri. Umesh Chandra Sinha
Date of conclusion of Hearing	:	11.11.2024
Date of Pronouncement	:	13.11.2024

ORDER

PER RAJ KUMAR CHAUHAN (J.M.):

1. This appeal is filed by the appellant/assessee against the order dated 16.06.2023 of Learned Commissioner of Income Tax, National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as the “CIT”], passed under section 250 of the Income Tax Act, 1961 [hereinafter



referred to as “*the Act*”] for A.Y. 2011-12, 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 filed Return of income for the A.Y. 2011-12 on 26.09.2011 declared total income of Rs 6,20,520/-. The return was processed u/s 143(1) of the Act. Subsequently, the case was selected scrutiny and accordingly statutory notice u/s 143(2) was issued on 1.08.2012 which was duly served on the assessee. Notice u/s 142(1) dated 02.07.2013 was issued and was duly served to the assessee. In response to the said notices, no response has been filed by the assessee.
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:

01. “The learned A. O. erred in making addition of Rs. 30,04,058/- to the total income.

02. The learned A.O. erred in passing best judgment assessment order u/s 144 without providing proper opportunity of being heard to the appellant. The Ld. A.O. ought to have issued a show cause notice and ought to have given opportunity of being heard, before completing assessment u/s 144 of the Act.

03. The learned A. O. erred in concluding that the auditor of the appellant has denied having conducted the audit for the



appellant. In fact, contrary to the A.O.'s contention, books of accounts of the appellant were audited u/s 44 AB of the Act for the year under consideration.

04. That the learned A. O. erred in making addition in respect of unsecured loans to the extent of Rs. 20,12,490/- on mere surmises and conjecture. The learned A.O ought to have relied on the Auditor's report or verified the said loans by seeking additional supporting as most of these unsecured loans pertain to earlier years.

05. That the learned A. O. erred in making adhoc addition on account of net profit. He erred in considering NP at 15% of the revenues without any basis or facts. The Ld. A.O. ought to have considered past history of the appellant.

06. That the learned A. O. also erred in initiating penalty proceeding u/s 271 A and 271B of the Act.”

4. 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 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. 4 and 7 of the Ld. CIT(A) observed as under: -

4. *After introduction of Faceless Appeal Scheme with effect from 25-09-2020, fresh notices u/s. 250 of the Act were issued on 28-12-2020 & 11-01- 2022. However, on the appointed dates, the appellant neither made any written submissions nor filed any application seeking adjournment. After enabling the window for communication with the CIT(A) by the NFAC with effect from 01-11-2022 also, no communication has been received from the appellant. Thereafter, one more opportunity was granted to the appellant by issuing notice u/s. 250 of the Act 17-01-2023 which the appellant failed to avail. Finally, one more notice u/s. 250 of the Act was issued on 28-04-2023 requiring the appellant to furnish its written submissions on or before 08-05- 2023. In a letter annexed to the hearing notice dated 28-04-2023, it was specifically stated that this is the “Last Opportunity” to furnish documents / written submissions in support of grounds of appeal, failing which the appeal will be decided ex-parte on the basis of material on record. This notice was also not complied with by the appellant as he neither made any written submissions nor filed any application seeking adjournment. Considering the above facts, it is clear that in this case sufficient number of opportunities have already been granted to the appellant, which the appellant has failed to avail. It may also be noted that this is an old appeal filed before 01-*



04-2019 and is to be disposed of on priority basis as per Interim Central Action Plan, 2023-24. Under these facts and circumstances, where the appellant's consistent noncompliance and indifference to the appellate proceedings is abundantly manifest, I do not have any alternative but to decide the appeal on the basis of facts available in grounds of appeal and assessment order of the Assessing Officer. Hence, the appeal is being decided ex-parte on the basis of material on record.

7. *It is clear from the discussion in para nos. 4, 5 & 6 above that the appellant is not desirous of pursuing the grounds of appeal though more than adequate opportunities were provided. Under the circumstances, I have no other alternative but to dismiss the appeal following the ratio of the decision of the Hon'ble ITAT, Delhi Bench in the case of CIT Vs. Multiplan India Limited reported in 38 ITD 320 and also the decision of the Hon'ble MP High Court in the case of Estate of Late Tukhoji Rao Holkar Vs. CWT reported in 233 ITR 480. The law assists those that are vigilant with their rights and not those that sleep there upon. Following this principle as embodied in the well known dictum "vigilantibus non dormientibus, jura subveniunt", all the grounds raised in this appeal as reproduced in para 2 supra are dismissed*

7. It is evident from the para no. 4 and 7 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 13.11.2024

Sd/-
(BR BASKARAN)
(ACCOUNTANT MEMBER)

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

Mumbai / Dated 13.11.2024
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