

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "J (SMC)", MUMBAI

**BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER AND
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER**

**ITA No.5527/Mum/2024
(Assessment Year: 2015-16)**

Shri Kirtikumar Champalal Mehta, Shop No.12/1/11, Gajanan Maharaj Chowk, Kannamwar Nagar No.1, Vikhroli (E), Mumbai-400 083 PAN: AALPM3751B	vs	Assessing Officer, Assessment Unit, ITD, Delhi ITO, Ward 26(2)(1), Mumbai, Kautilya Bhavan, C-41 to C43, G Block Bandra Kurla Complex, Bandra (E), Mumbai-400 051
APPLICANT		RESPONDENT

Assessee by : Shri Subodh Ratnaparkhi, CA

Respondent by : Mr.Asif Karmali (SR DR)

Date of hearing : 23/12/2024

Date of pronouncement : 24/12/2024

ORDER

PER ANIKESH BANERJEE, JM:

Instant appeal of the assessee was filed against the order of the National Faceless Appeal Centre, Delhi (NFAC) (for brevity, 'Ld.CIT(A)') passed under section 250 of the Income-tax Act, 1961 for Assessment year 2015-16, date of order 12/07/2024. The impugned order was emanated from the order of the

Learned Assessment Unit, Income-tax Department(for brevity, the 'Ld.AO) order passed under section 147 read with section 144B of the Act (in short, 'the Act') date of order 26/12/2023.

Brief Facts of the Case:

2. The facts of the case, in brief, are that during the assessment proceedings, an addition amounting to Rs. 45 lakhs was made under Section 69 of the Act, on account of unexplained investment. The aggrieved assessee subsequently filed an appeal before the Ld. CIT(A), albeit with a delay. The Ld.CIT(A) scheduled a hearing and granted multiple opportunities for compliance during the appellate proceedings. Eventually, the delay in filing the appeal was condoned, but the appeal was decided ex parte. The addition of Rs.45 lakhs was upheld, and the assessee's appeal was dismissed. Aggrieved by the appellate order, the assessee has preferred the present appeal before this Tribunal.

Arguments by the Assessee:

3. The Ld. AR submitted that the appellate order was passed ex parte due to non-compliance with the notices issued by the Ld. CIT(A). It was explained that the assessee and his mother were facing medical emergencies during the relevant period, with his mother being admitted to the Intensive Care Unit (ICU) of a hospital. An affidavit executed by the assessee on 18/10/2024 has been filed, detailing the reasons for non-compliance with the notices. The Ld. AR argued that there was a reasonable cause for the assessee's non-compliance during the appellate proceedings. The Ld. AR prayed for setting aside the matter before the Ld. AO for adjudication.

Submission by the Department:

4. The Ld. DR acknowledged the assessee's submissions and did not raise any substantial objections to the same.

Observations and Decision:

5. We have carefully considered the rival submissions and the materials placed on record. The alleged appellate order was admittedly passed ex parte. The reasons for non-compliance during the appeal proceedings have been explained by the Ld. AR through an affidavit duly executed by the assessee. After reviewing the explanation, we are of the opinion that the assessee was denied a reasonable opportunity of being heard. In the interest of natural justice, we deem it appropriate to remit the matter to the file of the Ld. AO for fresh verification de novo.

We also note that the issue pertains to different factual aspects, and the addition of Rs.45 lakhs was made under Section 69 of the Act. Therefore, the matter is remitted back to the Ld. AO for a fresh assessment. Both the Ld. AR and the Ld. DR have expressed their concurrence with this course of action.

Needless to say, the assessee shall be afforded a reasonable opportunity of being heard in the set-aside proceedings. Simultaneously, the assessee is expected to act diligently and cooperate fully in the de novo assessment proceedings.

6. In the result, the appeal of the assessee bearing **ITA 5527/Mum/2024** is allowed for statistical purpose.

Order pronounced in the open court on 24th day of December, 2024.

Sd/-

(PRABHASH SHANKAR)
ACCOUNTANT MEMBER
Mumbai, दिनांक/Dated: 24/12/2024
Pavanan

sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
5. गार्डफाइल/Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar), ITAT, Mumbai