

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH “A”, MUMBAI
BEFORE SHRI B R BASKARAN, ACCOUNTANT MEMBER
AND
SHRI RAJ KUMAR CHAUHAN, JUDICIAL MEMBER
ITA NO. 4207/MUM/2024 (A.Y: 2009-10)**

Lovell Miranda,

Miranda House 6, Kevni, SV Road,
Andheri (E), Mumbai-400 058

PAN: ACFPC4178E

(Appellant)

Assessee Represented by

Department Represented by

Date of conclusion of Hearing

Date of Pronouncement

Vs. ITO 14(1)(2),

Aayakar Bhavan, New Marine
Lines, Mumbai – 400 021

(Respondent)

: Shri Niraj Sheth, Ld. AR

: Shri Sunil Shinde, Ld. DR

: 13.11.2024

: 26.11.2024

ORDER

PER RAJ KUMAR CHAUHAN (J.M.):

1. This appeal is filed by the appellant/assessee against the order of Learned Commissioner of Income Tax (Appeals) / National Faceless Appeal Centre, Delhi [hereinafter referred to as the “CIT(A)”], passed under section 250 of the Income Tax Act, 1961 [hereinafter referred to as “the Act”] dated 25.06.2024 for the A.Y. 2009-10, wherein the Ld.



CIT(A) has dismissed the appeal ex parte as despite services of notice, the assessee failed to present its case before the Ld. CIT(A).

2. It was argued on behalf of the appellant/assessee that the notice issued by the Ld. CIT(A) were never received or served upon the assessee and as such they could not present its case before the Ld. CIT(A) who proceeded ex parte and decided the appeal on merit without giving effective opportunity of hearing to the assessee and as such the assessee was prevented from present its case before the Ld. CIT(A). Therefore, the impugned order suffers from illegality and liable to be set aside. The Ld. DR on the other hand supporting the judgment of the Ld. CIT(A) stating that there is no merit in the appeal and same is liable to be dismissed.

3. 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;”



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

Decision: I have carefully considered the facts of the case, submission of the appellant as per form 35 as well as gone through the observation and findings of the AO in his penalty order. Since no written submission against the grounds, as enumerated in grounds of appeal, is filed by the appellant despite availing multiple opportunity of hearing dated 24-08-23 06-06-24 etc. the appeal relating to the grounds are disposed on merit i.e. based on materials available on records.

I find from the grounds of appeal vis-à-vis statement of facts that the appellant claimed the AO has made erroneous addition based on erroneous information and the same proceedings being bad in law. But the appellant is unable to submit any written documents in support of its claim and in course of appeal proceeding the attitude of non compliance on the part of the appellant reveal the said claim of appellant being unacceptable .It is observed from the assessment orders that despite availing ample opportunity in assessment stage neither the appellant nor its authorized representative could have provided any acceptable satisfactory evidence against the show cause notice issued for the proposed addition made in the year under consideration. In view of that considering the entire conspectus of the case I am of opinion that despite availing adequate opportunity the



appellant is unable to give satisfactory explanation with corroborating evidence regarding the transaction is in the nature of business transaction and not in the nature of capital gain as enumerated by the AO. Accordingly, I do not find any infirmity in the order of the AO and find the same was justified in as much as the addition being made in accordance with law. Considering the entire conspectus of the case I hold that the appellant has no proper explanation regarding the nature of transaction entered by the appellant to the tune of stamp duty of Rs. 3,55,59,300/-. Accordingly addition of Rs. 1,72,54,650/-on account 50% share of Short Term Capital gain stand confirmed and the grounds relating to these issues are dismissed

5. It is thus evident from the contents of the impugned order extracted above that no effective opportunity of hearing has been given and there is no proof that the notice sent on various dates were duly served or brought to the notice of the appellant/assessee.
6. For these reasons, we are of the considered opinion that matter needs to be restored to the file of the Ld. CIT (A) for giving effective hearing to the assessee who shall present its case before the Ld. CIT(A) within 60 days. The impugned order is accordingly set aside and appeal filed by the assessee is allowed in above terms.



7. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 26.11.2024

Sd/-
(B R BASKARAN)
(ACCOUNTANT MEMBER)

Mumbai / Dated 26.11.2024
Dhananjay, Sr.PS

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

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