

IN THE INCOME TAX APPELLATE TRIBUNAL
Mumbai "F" Bench, Mumbai.
Before S/Shir Anikesh Banerjee (JM) & Omkareshwar Chidara (AM)

ITA No. 273/MUM/2025 (Assessment Year : 2022-23)

Javed Rasool Shaikh B-22, Milan Apartment K Villa, Rabodi, Thane West, Maha-400 601.	Vs.	ITO Ward 1(1) Qureshi Mansion Gokhale Road Thane, Mah.-400602.
PAN : BLSPS5324M		
Appellant		Respondent

Assessee by	:	Shri Vipul Shah
Revenue by	:	Ms. Kavitha Kaushik
Date of Hearing	:	03/03/2025
Date of pronouncement	:	18/03/2025

O R D E R

Per Omkareshwar Chidara (AM) :-

The following grounds of appeal were taken by the appellant while filing an appeal before the ITAT for the A.Y. 2022-23 :-

1. On the facts and circumstances of the case and in law the learned Commissioner of Income Tax (A) ["CIT(A)"] erred in dismissing the appeal and upholding the addition of Rs.75,21,569/- made by the learned Assessing Officer without appreciating a fact that the Appellant did not receive the notices issued by the Assessing Officer and hence the Appellant could not participate in assessment proceedings. The Appellant prays that the action of the CIT(A) is in violation of principles of natural justice.
2. On the facts and circumstances of the case and in law the learned CIT(A) erred in not admitting the details/evidence submitted by the Appellant on the ground that the case of the Appellant does not fall within the exception of Rule 46A, without appreciating a fact that the Appellant could not participate in assessment proceedings due to non-receipt of the notices, which is one of the exceptions of Rule 46A. The action of the CIT(A) is against the principles of natural justice and the addition upheld by the CIT(A) be deleted.
3. On the facts and circumstances of the case and in law the learned CIT(A) erred in not appreciating a fact that the Appellant had repeatedly stated that he has maintained proper books of accounts. The learned CIT(A) erred in upholding the AO's reliance solely on the non-furnishing of certain documents, without appreciating a fact that the Appellant has duly filed in the Balance Sheet and Profit & Loss account in the ITR Form. The action of the CIT(A) does not align with the principles of a fair and reasonable assessment process.

4. On the facts and circumstances of the case and in law the learned CIT(A) erred in not appreciating a fact that the Appellant had demonstrated his bonafide of not receiving the notice and the learned CIT(A) also erred in not appreciating a fact that the Income Tax department itself is aware that the notice sent by them are sometimes classified as "SPAM" and the advisory to that effect is mentioned in the notice.
5. On the facts and circumstances of the case and in law the learned CIT(A) erred in not appreciating a fact that the Appellant had replied to the Show Cause Notice dated 02.03.2024 and informed the learned Assessing Officer that no notices, calling for information, was received by the Appellant and despite having the said knowledge the learned Assessing Officer finalised the assessment order without providing an opportunity to the Appellant to submit the details, which is a violation of principles of natural justice.
6. On the facts and circumstances of the case and in law the learned CIT(A) erred in upholding the action of the Assessing Officer in concluding that a best judgment assessment was necessary solely based on the non-furnishing of certain documents without properly considering the appellant's explanations regarding the non-applicability of provisions of Section 44AB and the details filled in ITR Form.
7. On the facts and circumstances of the case and in law the learned CIT(A) erred in upholding the action of the learned Assessing Officer without appreciating the fact that the Appellant's turnover exceeded the turnover limit provided u/s. 44AD of the act and provisions of the act are not applicable.

2. From the Ld. CIT(A) order, it is observed that notices under section 143(2)/142(1) were issued three times and show-cause notice relating to addition was issued twice by the Ld. AO, as mentioned in paragraph 4.2, page No. 8. Since there was no response to any of these notices, the Ld. AO completed the assessment under section 144 of the I.T. Act by estimating income @ 8% of total turnover reported by appellant. The Ld. CIT(A) has gone through the assessment order and confirmed the assessment order refusing to admit additional evidence from appellant because the appellant did not file any submissions/evidences to the Ld. AO.

3. The Ld. AR of the appellant has stated before the Bench that during the appeal proceedings before Ld. CIT(A), that for the part of period mentioned by the Ld. AO, the appellant alongwith their family members, was in their native place attending the father of appellant who is their native

place and there is no internet facility. He has also pleaded that the appellant is not aware of internet and e-mail as he was dealing in buying and selling fish products. Finally, it was argued that the e-mail sent to appellant might have gone to "Spam" folder also. As the appellant was not aware of all these notices, it was pleaded that an opportunity may be given to the appellant to explain all the facts to the Ld. AO. It was requested that the matter may be remitted back to the Ld. AO where all queries would be replied with documentary evidences.

4. The Ld. DR opposed the arguments of Ld. AR of the appellant and relied on the orders of the Ld. AO and Ld. CIT(A).

5. After hearing the rival submissions, it is decided to remit the issue back to the file of the Ld. AO because there is a possibility of the appellant not knowing e-mails and internet/not receiving the notices of Department. The Ld. CIT(A) should have admitted the evidences which the appellant wants to file and adjudicate the issue on merits as he has got the powers which are co-terminus with that of Ld. AO, instead of refusing to entertain the evidences. As the issues were never dealt by Ld. AO as well as Ld. CIT(A), it is decided to remit the issue back to the file of the Ld. AO. The appellant is directed to cooperate with the Department and file all required particulars.

6. The appeal of appellant is allowed for statistical purposes.

Order pronounced in the open Court on 18/03/2025.

Sd/-
(ANIKESH BANERJEE)
JUDICIAL MEMBER

Sd/-
(OMKARESHWAR CHIDARA)
ACCOUNTANT MEMBER

Mumbai; Dated: 18/03/2025

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT

4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

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BY ORDER,
(Assistant Registrar)
ITAT, Mumbai