

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH “B”, MUMBAI
BEFORE SHRI B R BASKARAN, ACCOUNTANT MEMBER
AND
SHRI RAJ KUMAR CHAUHAN, JUDICIAL MEMBER
ITA NO. 1724/MUM/2024 (A.Y: 2017-18)**

Manish Subedar Pandey

Pandey Chawl Saibaba Gokul Nagar,
Akurli Road, Kandivali East,
Mumbai-400 101

PAN: BDGPP7705M

ITO ward 33(2)(3),

Room No. 848, 8th floor,
Kautilya Bhavan, C-41 to C-43,
G Block Bandra Kurla
Complex, Bandra (East)
Mumbai-400 051.

(Appellant)

Assessee Represented by

Department Represented by

Date of conclusion of Hearing

Date of Pronouncement

(Respondent)

**: Shri Anil M. Topiwala, Ld.
AR**

**: Ms. Monika H. Pande, Ld.
DR**

: 16.01.2025

: 25.03.2025

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 (NFAC), 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 13.02.2024 for the A.Y. 2017-18, wherein the Ld. CIT(A) has dismissed the appeal ex parte and confirmed the addition of Rs. 1,86,01,000/- made by the AO u/s 69A of the Act.

2. The brief facts of the case are that, the assessee filed return of income on 21.07.2017 declaring total income of Rs. 2,60,640/-. The case was selected for scrutiny under CASS and necessary statutory notices were issued and served upon the assessee on 25.10.19 and 11.12.19 calling for various details. In response, the assessee filed the necessary documents. Ld. AO observed that the documents filed by the assessee has not been authenticated properly and therefore in absence of the genuinity of the documents submitted by the assessee, the AO proceeded to make addition of Rs. 1,86,01,000/- u/s 69A of the Act. Penalty proceedings were also initiated separately.
3. Aggrieved by the order of AO, assessee preferred the appeal before Ld. CIT(A) and Ld. CIT(A) has dismissed the appeal of the assessee ex-parte and confirmed the addition made by AO. Hence, the assessee is in appeal before us and has raised the following grounds:-



(1) On the facts and in the circumstances of the case and in law the learned CIT(A), NATIONAL FACELESS APPEAL CENTRE (NFAC) DELHI has erred in confirming the order of the learned A.O. treating cash deposit of Rs. 1,86,01,000/- in IDFC Bank and SBI as unexplained money u/s 69A of I.T. Act and adding to the total income of the Appellant

(2) The Appellant craves leave to add, alter amend or delete any ground of Appeal either, before or during the course of hearing of the appeal

4. We have heard Ld. AR and Ld. DR. It was argued on behalf of the appellant/assessee that the AO has passed the assessment order without giving proper opportunity of hearing to the assessee and Ld. CIT(A) proceeded ex parte and decided the appeal on merit without giving effective opportunity of hearing to the assessee. 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.

5. We have carefully examined the record and considered the rival submission of both the parties. It is evident from para 4 of the order of Ld. CIT(A) that *“In course of appeal proceeding despite availing multiple opportunity of hearing including dated 23.11.23, 06.12.23, the appellant miserably failed to comply the said notices. However, the present appeal is disposed of on the basis of materials on records.”* Ld.



CIT(A) further observed that *‘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 22.11.23, 06.12.23, 14.12.23 the appeal is accordingly disposed on merit on the material available on record.’* Further the Ld. CIT(A) has observed and given its conclusion as under:-

In view of I find the contention of appellant of depriving proper opportunity of hearing is unacceptable. Therefore, considering the entire conspectus of the case I am of opinion that despite availing adequate opportunity, both in assessment as well as in appeal proceeding, the appellant is unable to give satisfactory explanation with corroborating evidence regarding unexplained cash transaction of cash deposits. 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 unexplained money/cash deposits. Accordingly addition made by the AO of Rs.1,86,01,000/-invoking provision of section 69A of the I.T Act stand confirmed and the grounds relating to these issues are dismissed.

In the result, the appeal of the appellant is dismissed

6. We have also considered Section 250 sub section 2(a) of "the Act" which 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;”

7. 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. It is thus evident from the contents of the impugned order extracted above that no effective opportunity of hearing has been given to the assessee which is bad in law and the passing of impugned order resulting miscarriage of justice and end of justice requires that assessee be given one more opportunity by the revenue to represent its case.
8. For these reasons, we are of the considered opinion that the matter needs to be restored to the file of the Ld. CIT (A) with a direction to give effective opportunity of hearing to the assessee who shall present its case before him within 90 days. The impugned order is accordingly set aside and appeal filed by the assessee is allowed in above terms.
9. In the result, appeal filed by the assessee is allowed for statistical purposes.



ITA No. 1724/Mum/2024
Manish Subedar Pandey

Order pronounced in the open court on 25.03.2025.

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

Mumbai / Dated 25.03.2025
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