

IN THE INCOME-TAX APPELLATE TRIBUNAL "F" BENCH,
MUMBAI

BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
&
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER

ITA No. 960/MUM/2025
(A.Y. 2014-15)

Shankarlal Shantilal Mali, C-304, 3 rd Floor, C Wing, Gokuldham Building, Sane Guruji Marg, Tardeo, Mumbai - 400034, Maharashtra	v/s. बनाम	National Faceless Assessment Centre, 2 nd Floor, E-Ramp, Jawaharlal Nehru Stadium, Delhi – 110 003
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: BUWPP2088Q		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

Appellant by :	Shri Shrujay Shah,AR
Respondent by :	Ms. Kavitha Kaushik (Sr. DR)

Date of Hearing	27.03.2025
Date of Pronouncement	03.04.2025

आदेश / ORDER

PER PRABHASH SHANKAR [A.M.] :-

The present appeal arising from the appellate order dated 10.01.2025 is preferred by the assessee against the order passed by the Learned Commissioner of Income-tax (Appeals)/National Faceless Appeal Centre, Delhi [hereinafter referred to as "CIT(A)"] pertaining to assessment order passed u/s. 147 r.w.s. 144 of the Income-tax Act, 1961 [hereinafter referred to as "Act"] dated 17.05.2023 for the Assessment Year [A.Y.] 2014-15.



2. The grounds of appeal are as under:-

1. *The learned Faceless CIT(A) has not considered the facts and circumstances of the given case in correct perspective before passing the Order. The question of a small-time mobile accessories retailer depositing INR 1,00,57,294/- in bank account just does not arise and is beyond any stretch of imagination.*
2. *The Learned Faceless CIT(A) has ignored the specific findings of Honorable ITAT Mumbai in case of RenukaMata Multi State Co-op Urban Credit Society [I.T.A No 4001 & 4002/Mum/2019].*
3. *The Learned Faceless CIT(A) has ignored the favorable order passed in the case of the Appellant for A.Y 2015-16 having identical facts and circumstances.*
4. *The Learned Faceless CIT(A) has ignored the Police Complaint filed by the Appellant in the given matter.*
5. *The information relied upon by the Learned Assessing Officer for initiating the income-escaping assessment suffer from severe defects which clearly indicate foul play making the entire proceedings void-ab-initio. The extract of debit and credit entries relied by the Learned Assessment Unit does not support the allegation made against the appellant.*
6. *Presuming without admitting the allegation, the Learned Assessment Unit cannot make any addition since the entire cash alleged to have deposited by the Appellant has been transferred to accounts of other Persons (not known to the Appellant) and Appellant has not derived any income whatsoever. Accordingly, the deeming fiction of section 69A of the Act is not applicable. The learned Assessment Unit failed to undertake any independent verification/enquiry/ application of mind pertaining to Person/ Persons to whom the cash alleged to have been deposited by the Appellant were transferred.*
7. *The conclusion arrived by learned Assessing Officer/ Assessment Unit are merely based on conjectures, surmises and guess work. The Learned Assessing Officer/ Assessment Unit has failed to consider the explanation provided by the Appellant and not provided any reasons for non-satisfaction. Further, the computation sheet and the notice of demand are not in consonance with the assessment order passed.*
8. *Since the information about cash deposit was obtained during search and seizure action u/s 132 of the Act conducted on 26th May 2017, the learned assessing officer should have commenced proceedings u/s 153C of the Act in the given case of the Appellant and not under section 147 of the Act. Accordingly, the entire proceedings u/s 147 of the Act which have been initiated is without jurisdiction.*
9. *The Learned Assessing Officer/ Assessment Unit failed to issue notice u/s 143(2) of the Act during the course of income-escapement proceedings.*

3. The brief facts of the case are the assessee filed his return of income for the year declaring total income at Rs.3,41,010/- which was processed u/s 143(1) of the Act. As per information received by the ld.AO, a search and seizure action u/s. 132 of the Act was undertaken in



no reply was received by the AO who consequently, treated the whole deposit of Rs. 1,00,57,294/- as unexplained income u/s 69A of the Act.

4. In various grounds of appeal and the Statement of Facts filed in the appeal before the Id.CIT(A), it was contented by the assessee that he was engaged in the retail trading business of mobile accessories during the year under consideration. Besides retail trading, he had also undertaken some agricultural activity during the year. Entire business transactions took place in cash mode. A nominal amount of cash deposit from the above sources was made in the bank account during the year. He had offered income for taxation on presumptive basis under section 44AD of the Act. Accordingly, he was not required to maintain any books of accounts. He denied having made such huge deposits stating that the amount involved was beyond his capacity and imagination, being a small retailer of mobiles accessories.

5. Consequent to the filing of appeal by the assessee was issued notices on 18/12/2024 and 24/12/2024, giving opportunities to upload his submission so as to substantiate the grounds raised in the appeal. However, it was observed by the Id.CIT(A) that the assessee did not respond by filing the reply or seeking adjournment of his case. Thus, it was deemed that he did not want to pursue the appeal. It was also noted that there was delay of 177 days in filing the first appeal. It is stated that



although the assessee had given an elaborate reason requesting for condonation of delay in filing the appeal, he failed to upload the material evidence and circumstances which prevented him from filing the appeal in time. It was ultimately concluded that the assessee failed to give the sufficient and reasonable cause for the delay in filing the appeal. Therefore, the delay in filing the appeal was not condoned and the appeal was dismissed *in limine*.

6. At the time of hearing of the appeal before us, the Id. Authorised Representative, on being asked to justify the delay in filing appeal before the first appellate authority, filed an affidavit mainly stating that the assessee was under the impression that the matter was closed after his initial response dated 14.01.2023. Moreover, he did not receive any subsequent communication from the Id. CIT(A) either by way of email or SMS. Therefore, he remained unaware of any subsequent notices or communication and came to know of the notices only when he received intimation of penalty notice and adverse assessment order.

6.1 On careful consideration of all material facts of the case, we are of the considered opinion it appears to be a case of miscommunication relating to e-portal and no malafide could be attributed to this lapse on his part. It is also observed that the Id. CIT(A) dismissed the appeal solely on the ground of non-prosecution. Such



dismissal without deciding the appeal on merits is contrary to the principles of natural justice. It is settled law that it is the duty of the appellate authority to dispose of an appeal on merits after considering the materials on record, even if the appellant fails to appear. However, it is equally true that it is the fundamental duty of the assessee to diligently pursue the appeal and comply with the notices and proceedings initiated by the Revenue authorities. Despite the notices under section 250 of the Act by the CIT(A), no substantive explanation was submitted. The assessee's contention of non-receipt of notices cannot absolve it of its duty to follow up on its appeal. However, considering the reasons cited above, we condone the delay in the larger interest of fairplay and justice following the principles of natural justice.

6.2 Accordingly, we proposed to both the sides during the hearing that the assessee should be given one more opportunity and this proposition was also not objected by the Id. DR. We are of the opinion that the scales of justice demands that the matter should be verified and revisited at the level of Id. CIT(A) and accordingly, we are of the considered view that the matter should be remanded back to the file of Id. CIT(A) for *de novo* adjudication by him while applying the principles of natural justice after affording sufficient opportunity of being heard to the assessee.



6.3 However, considering assessee's non-compliant attitude and lack of diligence in pursuing the appeal before the Id.CIT(A), we impose a token cost of Rs. 5,000/- on him. The cost shall be deposited to the credit of the Income Tax Department within 15 days of the receipt of this order and proof of payment shall be submitted before the Id.CIT(A).

7. In the result, the appeal of the assessee stands **allowed for statistical purposes.**

Order pronounced in the open court on 03/04/2025.

Sd/-

NARENDER KUMAR CHOUDHRY
(न्यायिक सदस्य / JUDICIAL MEMBER)

Sd/-

PRABHASH SHANKAR
(लेखाकार सदस्य/ACCOUNTANT MEMBER)

Place: मुंबई/Mumbai
दिनांक /Date 03.04.2025
Lubhna Shaikh / Steno

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT, Mumbai
5. गार्ड फाईल / Guard file.



सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.

