

**IN THE INCOME-TAX APPELLATE TRIBUNAL "C" BENCH,
MUMBAI**

**BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER
&
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER**

**ITA No.2327/MUM/2025
(A.Y. 2017-18)**

M/s Chenaji Narsingji, 120/22, Shop No. 7 & 8, Mumbadevi Road, Mumbai 400 002, Maharashtra	v/s. बनाम	Assistant Commissioner of Income Tax, Circle – 23(1), Room No. 613, 6 th Floor, Piramal Chambers, Lalbaug, Mumbai 400012, Maharashtra
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAFC0798B		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

Appellant by :	Shri Vipul Joshi a/w Ms. Dinkle Hariya & Shri Prashant Ghumare, ARs
Respondent by :	Shri R. A. Dhyani (CIT-DR)

Date of Hearing	09.07.2025
Date of Pronouncement	12.08.2025

आदेश / ORDER

PER PRABHASH SHANKAR [A.M.] :-

The present appeal is filed 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 u/s. 143(3) of the Income-tax Act, 1961 [hereinafter referred to as "Act"] dated 31.12.2019 for the Assessment Year [A.Y.] 2017-18.



2. The grounds of appeal are as under:

1. THE ORDER IS BAD IN LAW, ILLEGAL AND WITHOUT JURISDICTION

- 1.1 *In the facts and the circumstances of the case, and in law, the appellate order framed by the Commissioner of Income tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, [‘Ld. CIT (A)’] is bad in law, illegal and without jurisdiction, as the same is framed in breach of the statutory provisions of the Income tax Act, 1961 [‘the Act’] and the scheme and as otherwise also is not in accordance with the law.*
- 1.2 *Without prejudice to the generality of the above, the appellate order so passed is bad in law, illegal and void as the same is arbitrary and perverse and without application of mind to the facts and the legal position.*

2.VIOLATION OF PRINCIPLES OF NATURAL JUSTICE

- 2.1 *In the facts and the circumstances of the case, and in law, the appellate order so framed in bad in law and illegal, as the same is framed in breach of the principles of Natural Justice.*
- 2.2 *Without prejudice to the generality of the above ground, in the facts and the circumstances of the case, the Ld. CIT (A) erred i:*
- (i) *not granting proper, sufficient, reasonable and fair opportunity of being heard to the Appellant while passing the appellate order;*
 - (ii) *not granting an opportunity of personal hearing;*
 - (iii) ***not confronting the Appellant with the Remand Report relied upon, and without giving an opportunity to respond to the same;***
 - (iv) *not confronting the Appellant with all the material relied upon.*
- 2.3 *It is submitted that in the facts and the circumstances of the case, and in law, no such action was called for.*

WITHOUT PREJUDICE TO THE ABOVE

3. ADDITION OF RS. 3,51,53,913/- AS UNEXPLAINED CASH CREDIT U/S. 68 OF THE ACT

- 3.1 *The Ld. CIT (A) erred in confirming the action of the A.O. in making addition of the amount of Rs. 3,51,53,913/-, being regular and accounted sale proceeds in cash deposited into regular bank account, to the income of the Appellant u/s. 68 of the Act, on the ground of alleged unexplained cash credit.*

- 3.2 *While doing so, the CIT (A) erred in:*



- (i) Basing his action on surmises, suspicion and conjecture;
- (ii) Taking into account irrelevant and extraneous considerations; and
- (iii) Ignoring relevant material and considerations as submitted by the Appellant.

3.3 It is submitted that in the facts and the circumstances of the case, and in law, no such addition was called for.

3.4 Without prejudice to the above, assuming - but not admitting that some addition was called for, the Ld. CIT (A) failed to appreciate that the computation of the addition made by the A.O. was arbitrary, excessive and not in accordance with the law.

WITHOUT PREJUDICE TO THE ABOVE

4. ADDITION OF RS. 51,33,82,000/- AS UNEXPLAINED CASH CREDIT U/S. 68 OF THE ACT

4.1 The Ld. CIT (A) erred in confirming the action of the A.O. in making addition to the extent of Rs. 51,33,82,000/-, being sale proceeds received through banking channel & duly accounted, to the income of the Appellant u/s. 68 of the Act, on the ground of being alleged bogus transactions.

4.2 While doing so, the CIT (A) erred in:

- (i) Basing his action on surmises, suspicion and conjecture;
- (ii) Taking into account irrelevant and extraneous considerations; and
- (iii) Ignoring relevant material and considerations as submitted by the Appellant.

4.3 It is submitted that in the facts and the circumstances of the case, and in law, no such addition was called for.

4.4 Without prejudice to the above, assuming - but not admitting that some addition was called for, the Ld. CIT (A) failed to appreciate that the computation of the addition made by the A.O. was arbitrary, excessive and not in accordance with the law.

3. At the outset, we find that the appeal filed before us is delayed by 733 days. An application for condonation of delay has been filed alongwith an affidavit of the partner Sri Ashok.B.Jain. It has been submitted in this regard that the assessee after receiving the appellate order, filed a writ petition before the hon'ble Bombay High Court



seeking legal remedy against the flagrant violation of the principles of natural justice by the appellate order and the petition was filed on 8.3.2023 against the appellate order dated 30.01.2023. However, the same was finally withdrawn vide order in WP(L) No.6520 of 2023 dated 10.03.2025. The hon'ble court allowed withdrawal thereof with a direction to file appeal within four weeks of uploading the said order. Accordingly, the assessee filed this appeal on 02.04.2025 within the time line as the order was uploaded on 17.03.2025. The delay was not account of any negligence or carelessness but for bonafide and honest reasons. The delay is attributable to the assessee seeking legal remedy against the orders of the authorities below. In support, it has filed a copy of the High Court order.

3.1 On careful consideration of the submissions of the assessee, we are of the considered opinion that the delay in filing of the present appeal was not intentional but due bonafide reasons which needs to be condoned. We therefore, condone the delay.

4. Brief facts of the case are that the assessee firm carrying on business of manufacturing and trading in gold bullion filed its e-return of income on 30.09.2017 declaring total income of Rs.68,20,090/-. Survey u/s. 133A of the Act at its office premises of the assessee firm



was conducted on 29.12.2016 which mainly pertaining to substantial deposit in its bank account during demonetization period. A search was also conducted by the CBI on 08.07.2017. Later, assessment was completed u/s. 143(3) of the Act in which aggregate addition 57,28,73,299/- was made in respect of cash deposits made during demonetization period i.e. from 09.11.2016 to 30.12.2016. The assessee had deposited cash of Rs.3,60,20,500/- of SBN during the period.

5. In the subsequent appeal, the Id.CIT(A) remanded the details submitted by the assessee before him under Rule 46A to the AO who affirmed his conclusion as drawn in the assessment order. The Id.CIT(A) observed on examining the contents therein that the AO was not convinced by the assessee's submission and the explanation offered by it was not in the opinion of the AO satisfactory. In view of these observations, he concluded that there was merit in AO's action of addition of Rs. 3,51,53,915/- in as much as the same was made i) after providing ample opportunity to the appellant of being heard ii) after taking into account relevant and resourceful findings/considerations iii) relevant material on record and iv) the AO had not expressed his satisfaction about fresh evidence filed in appellate proceeding. In terms of the requirements of section 68 of Act, onus lay on the assessee which



was not discharged. Accordingly, he upheld the entire addition made in the assessment order.

6. Before us, the ld.ARs have made oral as well as written submission contesting the order of the authorities below. It is contented that the assessee was denied adequate opportunity of hearing by the ld.CIT(A) who without any application of mind and ignoring the submissions made, upheld the assessment order. It is submitted that the additional evidences were remitted to the AO for remand report. However, the contents of the said report have not been discussed at all in the appeal order. It is a case of flagrant violation of the principles of natural justice on part of the ld.CIT(A) as the remand report was not even confronted to the assessee to it for comments. It is further submitted that the assessee adhered to requirements as stated in Rule 114B and 114C(2) IT Rules. The assessee is a reputed merchant in gold bullion and are in Bullion Market since more than 150 years. The turnover runs into more than thousand crores a year. It has maintained full and complete records about purchases and sales and stock register. Accounts are subject to tax audit. Purchases and sales are also scrutinized by the Sales Tax Department. The cash deposits made during demonetization period represented cash sales which are included



in sales credited to Profit and Loss account and are duly offered for tax. Figures of cash sales and cash deposits in bank out of cash sales in past eight years during period 8th November to 31stDecember were duly submitted as also the amounts of deposits in bank in same period i.e. 08.11 to 31.12 for last 8 years showing that the cash deposits of almost same quantum was disclosed in years 2009-10, 2011-12 and 2012. Addition made in respect of sales made to 20 parties Rs.51,33,46,000/-, which are duly accounted in books of account and accordingly offered to tax. Details of these 20 parties and amount received for sales as per show cause notice and their PAN and VAT-TIN were submitted. Sales to all above said parties are duly accounted in books of account of the assessee and accordingly, offered to tax and reflected in MVAT return and they are fully supported by all possible documentary evidences. In respect of non-compliance by 19 parties to the summons issued by the AO, it is stated that the assessee is not empowered under the law to enforce attendance of any sales party to whom it had sold goods after obtaining KYC.

7. The ld.DR on the other hand argued that the case may not be remanded back as the ld.CIT(A) has duly considered the contents of the remand report before upholding the assessment order. He, however



admitted that remand report was not supplied to the assessee seeking its comments.

8. From the above discussion, it is evident that the appellate order has been passed by the Id.CIT(A) without discussing the issues involved, contents of the assessment order and the replies submitted by the assessee before him as also before the AO. No independent application of mind is discernible from the appellate order as the Id.CIT(A) has completely failed to evaluate the points of consideration so as to give his own decision on objective analysis of all relevant facts and circumstances of the case. He has, in utter disregard to the principles of natural justice and fair play, did not even analyse the contents of the Remand report or made it available to the assessee during appeal proceedings for counter comments.

8.1 In the light of above facts, we are of the considered opinion that the Id.CIT(A) has not decided the appeal on merits which is contrary to the mandate of section 250(6) of the Act. The same is reproduced here under for your ready reference:

"(6) The order of the Commissioner (Appeals) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reason for the decision."



8.2 A bare perusal of above provision makes it clear that the CIT(A) is bound to dispose of the appeal before him on merits. Once an appeal is preferred before him, then in disposing of the appeal, he is obliged to make such further inquiry that he thinks fit or direct the AO to make further inquiry and report the result of the same to him as per section 250(4) of the Act. Section 251(1)(a) and (b) of the Act provide that while disposing of appeal the CIT(A) would have the power to confirm, reduce, enhance or annul an assessment and/or penalty. Besides, Explanation to sub-section (2) of Section 251 of the Act also makes it dear that while considering the appeal, the CIT(A) would be entitled to consider and decide any issue arising in the proceedings before him in appeal filed for its consideration, even if the issue is not raised by the appellant in its appeal before the CIT(A). The appellate order is therefore, deficient in this regard.

9. During the course of hearing, we proposed to send the appeal back to the file of the Id.CIT(A) in the light of above discussion that the assessee was not provided adequate opportunity of being heard and granting fresh opportunity to the assessee to advance its arguments/submissions before the Id. CIT(A) so as to provide details in connection with the merits of the case and additional evidences etc. to



support its contentions. Both the sides did not object to this proposition. Accordingly, in the substantial interest of justice, we set aside the appellate order and restore the entire matter back to him for passing the appellate order *de novo* after allowing adequate opportunity of hearing to the assessee.

10. Before parting, we may make it clear that our decision to restore the matter back to the file of the Id.CIT(A) shall in no way be construed as having any reflection or expression on the merits of the dispute, which shall be adjudicated by him independently and in accordance with law.

11. In the result, the appeal is allowed for **statistical purposes**.

Order pronounced in the open court on **12.08.2025**.

Sd/-

SANDEEP GOSAIN

(न्यायिक सदस्य / JUDICIAL MEMBER)

Sd/-

PRABHASH SHANKAR

(लेखाकार सदस्य / ACCOUNTANT MEMBER)

Place: मुंबई/Mumbai

दिनांक /Date 12.08.2025

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.

