

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "E", MUMBAI**

**BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER
AND
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER**

**ITA No.7337/MUM/2025
Assessment Year: 2022-23**

Hemant Prabhakar Sonar 1 B, 31/32 Sea Hill Union Park Khar Pali Hill, Mumbai - 400052 PAN: AAIPS8971N	Vs.	Assessing Officer DCIT 17(1) Mumbai Kautilya Bhawan, Mumbai
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Jay Shah, Adv.
Revenue by : Shri Hemanshu Joshi, Sr.DR

Date of Hearing : 07.01.2026
Date of Pronouncement : 27.01.2026

ORDER

Per : Prabhash Shankar, [A M]:

The present appeal has been filed by the assessee which emanates from the appellate order passed by the Ld. CIT(A)/National Faceless Appeal Centre (NFAC), Delhi, [hereinafter referred to as "CIT(A)"] with regard to the assessment order passed under section 143(3) r.w.s. 144B of the Income Tax Act 1961, (in short 'the Act') dated 19.03.2024 A.Y. 2022-23.

2. The Assessee has raised following grounds of appeal :

"Addition of ₹35,58,338/- as Business Income

a. *On the facts and in the circumstances of the case, and in law, the Hon'ble Commissioner erred in confirming the addition of ₹35,58,338/- to business*

income, made by the AO on the ground of under-reporting of turnover, without appreciating that the alleged difference arose due to inclusion of:

- i. Recovery from past year debtors
 - ii. GST collected on sales
 - iii. TDS amounts received from customers
- b. The Appellant submitted a detailed reconciliation and evidence showing that the reported turnover of ₹9,06,88,403/- as per books and GSTR-9 was correct and the difference was due to timing and classification of receipts.
 - c. The addition is unjust, lacks factual and legal basis, and deserves to be deleted.

2. Initiation of Penalty Proceedings under Section 271B

- a. The Hon'ble Commissioner erred in confirming initiation of penalty proceedings u/s 271B, without appreciating that the Appellant's turnover was below 10 crore and his aggregate cash receipts and cash payments were well below 5% of the total.
- b. The Appellant was thus eligible for exemption from tax audit under the proviso to Section 44AB as amended by the Finance Act, 2020 and applicable to A.Y. 2022-23.
- c. Hence, there was no default under Section 44AB and the penalty initiation under Section 271B is unjustified and bad in law.

3. Initiation of Penalty Proceedings under Section 270A

- a. The initiation of penalty under Section 270A on alleged under-reported income of ₹35,58,338/- is untenable, as the income addition itself is based on misinterpretation of receipts and not on any misstatement or suppression..
- b. The appellant acted bona fide and maintained books of accounts; hence, no penalty under section 270A is warranted.

4. Levy of Interest under Section 234B and 234D

- a. The learned AO erred in levying interest of ₹1,49,520/- u/s 234B and *47,257/- u/s 234D without properly considering the nature of additions and advance tax already discharged by the Appellant.
- b. In view of the erroneous addition and bona fide conduct of the Appellant, interest may kindly be recomputed or deleted.

5. Denial of Natural Justice Submissions Ignored

- a. *The Hon'ble Commissioner erred in passing the appellate order ex parte despite the Appellant having uploaded full written submissions and evidence on the portal within the extended timeline (Ack. No. 225865931010725 dated 01.07.2025).*
- b. *No opportunity was granted to clarify or rectify portal glitches for later replies attempted after 08.09.2025.*
- c. *The appellate order, having failed to consider written replies on merit, is in gross violation of principles of natural justice and liable to be set aside”*

3. Briefly stated facts of the case are that the assessee filed his return declaring total income at Rs. 26,29,180/- and assessment was made u/s 143(3) of the Act determining income of Rs. 62,29,886/-by making certain additions. Against the order, the assessee filed appeal. According to the appellate order, notices u/s 250 of the Act were issued to the appellant electronically in E-proceeding/ITBA facility on as many as 4 occasions which however, remained non complied. Therefore, the ld.CIT(A) concluded that the assessee had no evidence to substantiate the grounds taken. Consequently, the appeal was dismissed *in limine* on account of non-prosecution.

4. Before us,the ld.AR has made a request for restoration of the appeal before the ld.CIT(A) and for giving one more opportunity to the assessee in the interest of justice.The ld.DR did not oppose this request.

5. It is evident that the ld.CIT(A) has not adjudicated merits of the case mainly non account of repeated non-compliance by the assessee, thus upholding the additions made by the AO. However, the fact remains that the assessee was not heard. Therefore, substantive adjudication of the issues could not be done by him. In the grounds of appeal, we find that the assessee has raised various grounds of appeal challenging the impugned additions. In our

view, the assessee should be accorded one more final opportunity in this regard to represent his case, following the principles of natural justice.

5.1 In the light of above observations and in the substantial interest of justice, we set aside the appellate order and restore the entire matter back to the ld.CIT(A) for passing the appellate order *de novo*. In case of any failure on the part of the assessee, he would be at liberty to pass order after considering the materials on record. The assessee will not seek any adjournment on frivolous ground and remain cooperative during the course of proceedings before the ld.CIT(A).

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

Order pronounced in the open court on 27.01.2026.

Sd/-
(ANIKESH BANERJEE)
JUDICIAL MEMBER

Sd/-
(PRABHASH SHANKAR)
ACCOUNTANT MEMBER

Place: Mumbai

Date : 27.01.2026

Poonam Mirashi,
Stenographer

Copy to: The Appellant
The Respondent
The CIT, Mumbai
The DR ITAT Mumbai
The Guard file.

//True Copy//

By Order

Dy/Asstt. Registrar,
ITAT, Mumbai.