

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "B" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
MS. KAVITHA RAJAGOPAL (JUDICIAL MEMBER)**

**ITA No. 2050/MUM/2024
Assessment Year: 2015-16**

Rajesh B. Jain as Legal Heir of
Bhanwarlal Jain,
171, 17th floor, Silver Arch, Petit
Hall Compound, Nepeansea
Road,
Mumbai-400006.
PAN NO. AAFPJ 1924 R
Appellant

ITO Ward 19(1)(1),
Piramal Chamber,
Lalbaug,
Mumbai-400012.
Vs.

Respondent

Assessee by : Mr. Tushar Nagori
Revenue by : Mr. Swapnil Choudhari, Sr. DR

Date of Hearing : 17/02/2026
Date of pronouncement : 23/02/2026

ORDER

PER OM PRAKASH KANT, AM

This appeal by the assessee is directed against order dated 12.03.2024 passed by the Ld. Commissioner of Income-tax (Appeals) – 47, Mumbai [in short 'the Ld. CIT(A)'] for assessment year 2015-16, raising following grounds:



1. On the facts and in the circumstances of the case and in law, the Learned CIT(A) erred in passing the order u/s 250 of the Act, ex-parte, without appreciating the fact that the appellant had duly made an application seeking adjournment of hearing dated 09.02.2024, which was overlooked by the Ld. CIT(A) and the impugned order was passed without considering the adjournment request and the submission of the appellant, which is against the principles of natural justice.

2. On the facts and circumstances of the case and in law, the learned CIT(A) erred in holding the jurisdiction by the Assessing Officer in reopening the case of the appellant u/s 147 of the Act as valid without appreciating the fact that the conditions laid down under the Act for initiating reassessment proceedings were not fulfilled.

3. On the facts and circumstances of the case and in law, the learned CIT(A) erred in confirming the addition of alleged unexplained cash commission income of Rs. 8,26,30,691/- u/s 69A for allegedly providing accommodation entries through 70 alleged benami concerns without appreciating the fact that the appellant is managing only those concerns where the appellant himself is proprietor/partner/director and that there is no evidence to hold that the said 70 concerns were controlled by the appellant.

4. On the facts and circumstances of the case and in law the learned CIT(A) erred in confirming the addition of alleged commission income solely on the basis of search action on appellant without appreciating the fact that the appellant has retracted the statement given before Investigation Wing, Mumbai as the same was taken under coercion and without the consent of the appellant.

5. On the facts and circumstances of the case and in law, the learned CIT(A) erred in holding that the data found in the '4 GB white colour Sony Pen Drive', allegedly seized by the Investigation Wing, belongs to the appellant without appreciating the fact that the same was not found at the premises of the appellant and neither the pen drive was mentioned in the panchnama nor the ownership of the pendrive was admitted by the appellant.

6. On the facts and circumstances of the case and in law, the learned CIT(A) erred in making the addition on the basis of the alleged pen drive during search u/s 132 of the Act without appreciating the fact that procedures provided u/s 65B of the Indian Evidence Act 1872 in respect of digital data were not complied by the Income Tax Department.



7. *On the facts and circumstances of the case and in law, the learned CIT(A) erred in relying on the confessional statements of various persons of the alleged concerns without granting any opportunity to the appellant to cross examine the partner/ director/ proprietor of the alleged 70 controlled entities.*

8. *On the facts and circumstances of the case and in law, the learned CIT(A) erred in confirming the addition made by the assessing officer without appreciating the fact that the assessing officer is extrapolating material pertaining to other years in the present assessment year, without providing any corroborative evidences and making the addition on estimation purely on the basis of surmises.*

9. *On the facts and circumstances of the case and in law, the learned CIT(A) erred in holding that the retractions made by the appellant against the statement recorded under section 132(4) of the Act, without appreciating the facts and circumstances of the case.*

2. In Ground No. 1 of the present appeal, the assessee challenges the impugned order passed by the Ld. CIT(A) on the primary ground of procedural impropriety. It is contended that an adjournment application dated 09.02.2024, moved by the assessee, was overlooked by the first appellate authority, resulting in an *ex-parte* order passed without a substantive hearing or consideration of the assessee's explanation.

2.1 The Ld. Counsel for the assessee submits that the assessee was prevented by sufficient cause from representing the matter on the scheduled date. It is argued that the failure of the Ld. CIT(A) to take cognizance of the adjournment request effectively deprived the assessee of the right to be heard. The assessee seeks a remand of the matter to ensure a fair opportunity to place documentary evidence on record.



2.2 Per contra, the Revenue supports the impugned order, noting that the Ld. CIT(A) was compelled to sustain the additions made by the Assessing Officer (AO) as the assessee had failed to avail of multiple opportunities previously granted.

3. We have heard the rival submissions and perused the relevant material available on record. The record indicates that the Ld. CIT(A) proceeded to confirm the additions primarily due to the non-appearance of the assessee. However, the specific contention that an adjournment request was pending and ignored remains uncontroverted.

3.1 It is a settled principle of law that the "Right to be Heard" is not a mere ritualistic formality but a substantive right. Judicial and quasi-judicial authorities must ensure that orders are not only fair but appear to be fair. While the Ld. CIT(A) is within his rights to curb dilatory tactics, the inadvertent overlooking of a formal adjournment application results in a technical breach of the principles of natural justice.

3.2 We are of the considered view that justice should not be sacrificed at the altar of technicalities or procedural haste. In our opinion, to subserve the ends of justice, the assessee deserves a final opportunity to substantiate its claims through relevant submissions and documentary evidence.



3.3 In light of the facts and circumstances discussed above, we find it appropriate to set aside the impugned order of the Ld. CIT(A). The matter is hereby **restored** to the file of the Ld. CIT(A) for a *de novo* adjudication. The Ld. CIT(A) is directed to decide the issue afresh after providing a reasonable and effective opportunity of being heard to the assessee.

4. Consequently, Ground No. 1 is allowed. Since the primary grievance regarding the denial of natural justice has been addressed by restoring the matter, the remaining grounds of appeal are rendered academic at this stage and do not require separate adjudication.

5. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 23/02/2026.

Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai;
Dated: 23/02/2026
Rahul Sharma, Sr. P.S.



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,
(Assistant Registrar)
ITAT, Mumbai