

**IN THE INCOME TAX APPELLATE TRIBUNAL "SMC", BENCH MUMBAI  
BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER  
&  
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

**ITA No.5324/Mum/2019  
(Assessment Year: 2014-15)**

Mahendra P Angara Shop No.3 & 4,9 Cooper Building 1 <sup>st</sup> Parsiwada Lane Nanubhai Desai Road Mumbai-400 004	Vs.	ACIT-19((2) 207, 2 <sup>nd</sup> Floor Matru Mandir Tardeo Road Mumbai-400 007
<b>PAN/GIR No.AAAJPA1300L</b>		
<b>Appellant)</b>	<b>..</b>	<b>Respondent)</b>

Revenue by	Shri. A.H.Ansari, Sr.AR (Addl.CIT)
Assessee by	Shri. S.R.Lodhe, AR
<b>Date of Hearing</b>	<b>20/01/2020</b>
<b>Date of Pronouncement</b>	<b>29/01/2020</b>

**आदेश / O R D E R**

**PER G.MANJUNATHA (A.M):**

This appeal filed by the assessee is directed against, the order of the Ld. Commissioner of Income Tax (Appeals)-07, Mumbai, dated 27/05/2019 and it pertains to Assessment Year 2014-15.

2. The assessee has raised the following grounds of appeal:-

1. *The learned CIT(A) erred in passing ex-party order and confirming the addition made by the Ld. AO without giving of being heard to the assessee.*
2. *The Ld.CIT(A) violated the principle of natural justice.*
3. *The Ld.CIT(a) erred in confirming interest component of Rs. 3,50,137/- paid on loan of Rs. 54,05,000/- taken from Nazar Impex.*

4. *The fault at the end of Authorized Representative cannot be penalized the assessee as the assessee has engaged the AR and believed and relied upon the AR in good faith.*

5. *Appellant deserve rights to add, amend, delete or alter any of the grounds if need so arises.*

3. The brief facts of the case are that the assessee is an individual, engaged in the business of trading in various ferrous & Non ferrous metals, filed his return of income for AY 2014-15 on 28/11/2014, declaring total income of Rs. 24,54,400/-. The case was selected for scrutiny and the assessment has been completed u/s 143(3) of the I.T.Act, 1961, on 07/12/2016, determining the total income at Rs. 28,04,540/- by making additions towards interest paid on loans taken from Nazar Impex, on the ground that purported loans taken from the said parties was non genuine and consequently, interest paid on said loans cannot be allowed u/s 37 of the I.T.Act, 1961. The assessee has carried the matter in appeal before the first appellate authority. Before the Ld.CIT(A), the assessee, neither appeared, nor filed any details to justify its case, despite various dates of hearing was provided by the Ld.CIT(A) as noted by him in his appellate order at para 2.1 on pages 2 and 3. Therefore, he proceeded to dispose of appeal filed by the assessee *ex-parte* and decided the issue on merits, as per materials available on record and confirmed additions made by the Ld. AO towards disallowances of interest paid on loan taken from M/s Nazar Impex, on the ground that said loan was non genuine and which was in the nature of accommodation entries. Aggrieved by the Ld.CIT(A) order, the assessee is in appeal before us.

4. We have heard both the parties, perused the material available on record and gone through orders of the authorities below. The

Ld.CIT(A) has disposed of appeal filed by the assessee *ex-parte* on the basis of material available on record for the reasons that the assessee has neither appeared, nor filed any details to justify its case. No doubt, it is the duty of the person, who has filed appeal should go before the authorities and present its case with necessary evidences for speedy disposal of appeal. If the person, who has filed appeal did not appeared before the first appellate authorities, then the appellate authorities left with no option, but to dispose of the appeal, on the basis of material available on record, but such appeal cannot be disposed in *lumine* for non appearance of the parties. In this case, the assessee has explained the reasons for not appearing before the Ld.CIT(A), on the date specified for hearing appeal. On perusal of reasons adduced by the assessee for not appearing before the Ld.CIT(A), we find that there is no deliberate attempt from the assessee not to go before the appellate authorities. Therefore, considering the facts and circumstances of this case and also, taken note of reasons given by the assessee for not appearing before the Ld.CIT(A), we are of the considered view that the issue needs to go back to the file of the Ld.CIT(A) to give one more opportunity to the assessee to present its case with necessary evidences. Hence, we set aside the issue to the file of the Ld.CIT(A), to decide the issue in accordance with law after giving opportunity of hearing to the assessee. Needless to say, the assessee shall go before the Ld.CIT(A) and file necessary evidences, in order to dispose the appeal.

5. In the result, appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court on this 29/01/2020

**Sd/-**  
**(SAKTIJIT DEY)**  
JUDICIAL MEMBER

**Sd/-**  
**(G. MANJUNATHA)**  
ACCOUNTANT MEMBER

Mumbai; Dated 29/01/2020  
Thirumalesh Sr.PS

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)  
ITAT, Mumbai