

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

BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER

ITA NO. 3355/MUM/2019 (A.Y: 2015-16)

Deepak Nagindas Shah 506-B, Walkeshwar Chandanbala CHS Ltd., 4, R.R. Thakkar Road Walkeshwar, Mumbai – 400 006 PAN: AAQPS1861H	v.	ACIT, Circle – 19(1) 2 nd Floor Matru Mandir Tardev Road Mumbai – 400 007
(Appellant)		(Respondent)

Assessee by	:	None
Department by	:	Ms. Arju Garodia
Date of Hearing	:	21.09.2020
Date of Pronouncement	:	29.09.2020

ORDER

PER C.N. PRASAD (JM)

1. This appeal is filed by the assessee against the order of the Learned Commissioner of Income Tax (Appeals) – 30, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 29.03.2019 for the Assessment Year 2015-16.

2. Assessee has raised the following grounds in its appeal: -

"1. On the facts and circumstances of the Appellants case and in law the Ld. Commissioner of Income Tax (Appeals) erred in dismissing the appeal filed without providing an opportunity of being heard.

2. *On the facts and circumstances of the Appellants case and in law the Learned Commissioner of Income Tax (Appeals) erred in confirming the addition of Rs. 60,76,295/- on account of disallowance of interest paid on Unsecured Loans.*

3. *On the facts and circumstances of the Appellants case and in law the Learned Commissioner of Income Tax (Appeals) failed to appreciate that business income is taxable income and not tax free income.*

4. *On the facts and circumstances of the Appellants case and in law the Learned Commissioner of Income Tax (Appeals) failed to appreciate that it is not mandatory to have positive business income to claim expenses.*

5. *On the facts and circumstances of the Appellants case and in law the Learned Commissioner of Income Tax (Appeals) failed to appreciate that all borrowed money is deployed in Partnership Firm to earn business income.*

6. *On the facts and circumstances of the Appellants case and in law the Learned Commissioner of Income Tax (Appeals) failed to appreciate that the appellant has earned Rs. 1,71,64,6207- as business income from M/s. Ritesh Exports which is significantly higher than the interest expenses claimed.*

7. *the Appellant craves leaves to add, alter, amend, withdraw or modify any or all grounds of appeal, each of which are without prejudice to one another."*

3. In spite of issue of notice none appeared on behalf of the assessee nor any adjournment was sought. Therefore, I proceed to dispose of this appeal on hearing the Ld. DR on merits.

4. Heard Ld. DR, perused the orders of the authorities below. On a perusal of the Ld.CIT(A) order, I find that even though the Ld.CIT(A) provided opportunity on several occasions assessee could not appear and assessee filed adjournment petition on the last occasion i.e. 14.02.2019

when the matter has been taken up and this adjournment was rejected by the Ld.CIT(A). Considering the totality of facts and circumstances of the case and keeping in view the additions/disallowance made by the Assessing Officer, in the interest of justice I am of the opinion that assessee should be given one more opportunity of being heard. Thus, this appeal is restored to the file of the Ld.CIT(A) for denovo adjudication in accordance with law. Assessee shall cooperate with the proceedings before the Ld.CIT(A) without taking unnecessary adjournments. Thus, this appeal is restored to the file of the Ld.CIT(A) accordingly.

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

Order pronounced on 29.09.2020 as per Rule 34(4) of ITAT Rules by placing the pronouncement list in the notice board.

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER
Mumbai / Dated 29/09/2020
Giridhar, 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.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum