

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR.**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. No. 200/Asr/2023
Assessment Year: 2016-17**

Darshan Kumar Garg, 214, Dr. Mela Ram Road, Bathinda. [PAN:-CTTPS1322P] (Appellant)	Vs.	Dy. Commissioner of Income Tax, Circle-1, Bathinda. (Respondent)
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Appellant by	Sh. Sudhir Sehgal, Adv.
Respondent by	Smt. Ratinder Kaur, Sr.DR.

Date of Hearing	28.08.2023
Date of Pronouncement	30.08.2023

ORDER

Per: Anikesh Banerjee, JM:

The instant appeal of the assessee was filed against the order of the Id. NFAC, Delhi, (in brevity 'the CIT (A)') order passed u/s 250 of the Income-tax Act, 1961 (in brevity the Act) for assessment year 2016-17. The impugned order was emanated from the order of the Id. ACIT, Circle-1, Bathinda, (in brevity the Id. AO) order passed u/s 143(3) of the Act.

2. The assessee has taken the following grounds:

“1 That the learned CIT(A) is not justified in dismissing appeal of the appellant and confirming the addition of Rs. 26,63,332/- made by the Assessing Officer.

2 That the learned CIT(A) has erred in law and on facts in confirming addition of Rs. 26,63,332/- on account of interest paid whereas as per explanation already furnished and material placed on record during the assessment proceedings, the same is duly admissible.

3 That the learned CIT(A) has erred in law and on facts by upholding the addition of Rs. 26,63,332/- made on account of interest u/s 57 of the Act whereas nexus between interest expenditure and income earned on account of interest duly furnished during the assessment proceedings. As such the deduction of interest paid against the interest income earned duly proved and admissible as per law.

4 That the appellant craves to add, amend or alter anyground of appeal on or before the hearing.”

3. Brief facts of the case are that the assessee is an individual capacity filed the ITR and declared the income under the head on salary, rent, share of profit in firm and interest income. The assessee claimed the deduction u/s 57 amount to Rs. 26,63,332/- against the income earned from the other sources. The said deduction u/s 57 was disallowed by the AO and the addition was made amount to Rs.26,63,332/- with the total income of the assessee. Aggrieved assessee filed

an appeal before the Id. CIT(A). The Id. CIT(A) upheld the order of the Id. AO. Being aggrieved the assessee filed an appeal before us.

4. The Id. AR vehemently argued and submitted a statement of key point which is taken in the record. The Id. AR first argued that the appeal order was passed *ex prate* without allowing the assessee to submit the documents in favour of his arguments. The date was fixed on 22.05.2023 but assessee's consultant Mrs. Ashima Garg, CA who was responsible for checking the portal and informing the counsel for preparation on necessary replies was leave for marriage on & from dated 13.5.2023. The person was deputed to check the Income Tax portal had missed the notice issued on dated 15.5.2023. Accordingly, the assessee was unable to submit the documents before the Id. CIT(A) in favour of his argument. The Id. AR argued that the reasonable opportunity was denied during appeal proceeding.

5. The Id. DR vehemently argued and relied on order of revenue authorities.

5.1 The Id. DR invited our attention in appeal order para 4 which is reproduced as below:

“4. Findings:

In this case, Notice was issued on 13.01.2021 to the appellant to furnish written submissions and documents on or before 28.01.2021. It was specifically stated in the said notice that if

no submissions/ information/ documents were received within the stipulated time period, it would be presumed that the appellant had nothing to say in the matter and the department may proceed ahead based on material available on record. In view of the fact that no written submissions/ information/ documents were received from the appellant, nor any adjournment sought, another notice was issued on 17.09.2021 to the appellant to furnish written submissions, information and documents on or before 04.10.2021. It was specifically stated in the said notice that if no submissions/ information/ documents were received within the stipulated time period, it would be presumed that the appellant had nothing further to say in the matter and the appeal would be decided on merits on the basis of material available on record. No written submissions/information/documents were received, nor any adjournment sought. Accordingly, yet another notice was issued on 08.12.2021 to the appellant to furnish written submissions, information and documents on or before 23.12.2021. The Appellant asked for adjournment on 22.12.2021. Another notice was issued on 03.08.2022 to the appellant to furnish written submissions, information and documents on or before 18.08.2022. The Appellant again asked for the adjournment on 18.08.2022. Another notice was issued on 15.05.2023 to the appellant to furnish written submissions, information and documents on or before 22.05.2023. In view of the fact that no written submissions/ information/ documents have been received till date from the

appellant nor any adjournment sought, appeal is being decided on the basis of material available on record.

Despite repeated notices as delineated above, the appellant has not seen it fit to file any submissions, information or documents during appeal proceedings. The only material on record in this case is Form 35 filed by appellant and copy of assessment order dated 30.11.2018 filed by the appellant along with Form 35. The material on record has been carefully perused.

There is no material on record to warrant interference in the order of the AO.”

6. We heard the rival submission and considered the documents available in the record. The assessee was denied submitting the documents in favour of his argument before the Id. CIT(A) during appeal proceeding. The reason for noncompliance of notice before the Id. CIT(A) was explained and has reasonable cause for non-submission of documents in the Income Tax portal by the assessee. The concern CA Mrs. Ashima Garg was in leave and the concern person had missed the notice to reply the same. The assessee was suffered by the ignorance of the office of consultant which is not deliberate act. In our considered view the reasonable opportunity was denied for the assessee for submission of his evidence. There is plausible cause for no appearance before the 1st appellate authority. We are, therefore, of the opinion that interest of justice would be served if the impugned order is set aside and the matters

are remitted back to the Id. CIT(A) for consideration thereof afresh. We are not expressing any views on the merits of the case so as to limit the appellate procedure before the Ld. CIT(A). The assessee should be diligent in the set aside proceeding before the Id. CIT(A). Needless to say, the assessee should get reasonable opportunity of hearing in setting aside proceedings.

7. In the result, the appeal of the assessee bearing **ITA No. 200/Asr/2023** is allowed for statistical purpose.

Order pronounced in the open court on 30.08.2023

Sd/-

(Dr. M. L. Meena)
Accountant Member

Sd/-

(ANIKESH BANERJEE)
Judicial Member

AKV

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy
By order