

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

**BEFORE SHRI B R BASKARAN, AM &
SHRI N. K. CHOUDHRY, JM**

I.T.A. No. 1824/Mum/2023
Assessment Year: 2014-15)

Sandeep Narayan Rathi,
AB/14, Nandanvan Indl. Estate
Ltd., LBS Mark, Wagle Estate
Indl. Estate, Teen Hath Naka,
Thane(West)-400604

Vs.

**Dy. Commissioner of
Income Tax, Circle-3,**
Room No. 2, B Wing, 6th
Floor, Ashar IT Park, Wagle
Estate, Thane (West)-
400604.

PAN No. **AGHPR3661B**

Appellant) : **Respondent)**

Appellant/Assessee by : Shri Shashank A. Mehta, CA
Respondent/Department by : Shri Paresh Deshpande, Sr.
DR

Date of Hearing : 25.10.2023
Date of Pronouncement : 30.10.2023

O R D E R

Per N. K. Choudhry, JM:

The Assessee/Appellant herein has preferred this appeal against the order dated 22.03.2023 impugned herein passed by National Faceless Appeal Centre (NFAC), Delhi /Ld. Commissioner of

Income Tax (Appeals)-2, Thane {in short 'Ld. Commissioner'} under section 250 of the Income Tax Act 1961 (in short 'the Act').

2. In the instant case, the assessment order dated 29.12.2016 was passed by the Assessing Officer (AO) under section 143(3) of the Act whereby the amount of Rs. 14,41,398/- was disallowed under section 68 of the Act and added back in the income of the Assessee. The Assessee challenged the said assessment order by filing first appeal on 01.02.2017 before the Ld. Commissioner, which was taken into consideration and various notices such as on dated 29.02.2020, 25.12.2020, 30.09.2022 and 21.02.2023 were issued to the Assessee, however, the Assessee neither appeared nor filed any document except statements of fact along with Form-35, therefore, in the constrained circumstances, the Ld. Commissioner decided the appeal as ex-parte in limine but not on merit.

3. The Assessee before us claimed that the Assessee has preferred first appeal before the Ld. Commissioner on 03.01.2017 but it is a fact that the same was taken for hearing only in the Month of February 2020 and thereafter in December 2020, 31.09.2022 and on 21.02.2023. The Ld. Commissioner in para-5.2 of the impugned also misunderstood that the appeal has been preferred against the order levying the penalty under section 271(1)(c) of the Act, whereas it is a fact as also appeared in para-1 of the impugned order that the order under challenge before the Ld. Commissioner was under section 143(3) of the Act but not under section 271(1)(c) of the Act.

3.1 Considering the peculiar facts and circumstances as the Ld. Commissioner failed to decide the appeal in proper manner in the absence of reply and documents which the Assessee has failed to file, hence, for just decision of the case and for the ends of justice, we are inclined to remand the instant case to the file of the Ld. Commissioner for decision afresh, suffice to say by affording reasonable opportunity of being heard to the Assessee, thus ordered accordingly.

The Assessee is also directed to appear, if requires and file the relevant documents which would be needed for proper and real adjudication of the case and in case of further default, the Assessee shall not be entitled for any leniency.

4. In the result, appeal filed by the Assessee stands allowed for statistical purposes.

Order pronounced in the open court on 30-10-2023.

Sd/-

(B R BASKARAN)
Accountant Member

Sd/-

(N. K. CHOUDHRY)
Judicial Member

SK, Sr.PS.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai