

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"G" BENCH, MUMBAI**  
**BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND**  
**SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA no. 3612/Mum./2023**  
**(Assessment Year : 2016-17)**

Spacotech Equipment & Structural Pvt Ltd  
213, P.N Kothari Estate, LBS Marg,  
Bhandup (W), Mumbai- 400078  
PAN – AAEC6237L

..... Appellant

v/s

Income Tax Officer, Ward 15(3)(4)  
Aaykar Bhavan, New Marine Lines,  
Mumbai- 400020

..... Respondent

Assessee by : Shri. Rajesh S. Athavale  
Revenue by : Shri Manoj Kumar Singh

Date of Hearing – 27/02/2024

Date of Order – 04/03/2024

**ORDER**

**PER SANDEEP SINGH KARHAIL, J.M.**

The present appeal has been filed by the assessee challenging the impugned order dated 09/08/2023 passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*learned CIT(A)*], for the assessment year 2016-17.

2. In this appeal, the assessee has raised the following grounds:-

1. *The learned CIT(A) erred in dismissing the appeal without deciding anything on the merits of the case.*
2. *The learned CIT(A) erred in confirming the action of the Assessing Officer (AO) in treating genuine borrowings of INR 1,65,98,235 taken from Directors as Unexplained Cash Credit under section 68 of the Income Tax Act.*
3. *The learned CIT(A) erred in confirming the action of AO in treating some non-existent amount of INR 51,78,645 as Short term loans taken by the appellant and further erred in confirming the same as Unexplained Cash credit under section 68 of the Income Tax Act.*
4. *The learned CIT(A) erred in confirming the ad-hoc disallowance of INR 27,67,493 (being 50% of interest expenses of INR 55,34,987 incurred by the appellant) made by the AO as non-genuine expenses.*
5. *The learned CIT(A) erred in not directing the AO to consider the various submissions filed by the appellant during the course of assessment proceedings, which appeared to be not considered by the AO.*
6. *Each one of the above grounds of appeal is without prejudice to the above.*
7. *The appellant reserves the right to add, alter or amend to the above grounds of appeal.*

3. The brief facts of the case are that for the year under consideration, the assessee filed its return of income on 17/10/2016 declaring a total income of Rs.23,68,923. The return filed by the assessee was selected for scrutiny and statutory notices under section 143(2) as well as section 142(1) were issued and served on the assessee. As the assessee was not responding to the notices issued under section 142(1) of the Act, the final show cause notice was issued on 06/12/2018. However, in the absence of any response from the assessee, the Assessing Officer completed the assessment under section 144 of the Act on the basis of the material available on record and assessed the total income of the assessee at Rs.2,69,13,293 vide order dated 28/12/2018.

4. In the appeal before the learned CIT(A), despite various notices being issued, no reply/submission was filed on behalf of the assessee. Accordingly, vide impugned ex-parte order dated 09/08/2023, the learned CIT(A) dismissed the appeal filed by the assessee. Being aggrieved, the assessee is in appeal before us.

5. We have considered the rival submissions and perused the material available on record. In the present case, the learned CIT(A) has passed the order ex-parte due to the non-appearance of/on behalf of the assessee. It is evident from the record that the learned CIT(A) issued notices on 17/10/2019, 08/01/2021, 29/09/2022, 25/04/2023, 22/06/2023, and 04/08/2023, however, no compliance was made by the assessee. Now in appeal before us, the assessee is duly represented by the learned Authorised Representative ("*learned AR*") and wishes to pursue the litigation against the addition made by the Assessing Officer. However, the assessee could neither produce any material on record nor show any reasonable and sufficient cause to justify the non-compliance of the notices issued by the Assessing Officer as well as by the learned CIT(A).

6. We are of the view that without any reasonable and sufficient cause and due to the non-compliant behaviour of the assessee, the energy and time of the Income Tax Authority have been wasted which could have been used for justice delivery in other cases. We further find that no finding has been rendered by the learned CIT(A) on the merits of the appeal in the impugned order. In the

circumstances, we feel it appropriate to impose a cost of Rs.5,000/-, which the assessee shall pay to the Prime Minister's National Relief Fund within 30 days from the date of receipt of this order. Subject to the payment of the cost by the assessee, the order of the learned CIT(A) is set aside and the matter is restored back to the file of the learned CIT(A) for deciding afresh on merits after taking into consideration submissions of the assessee. Needless to mention no order shall be passed without affording reasonable opportunity of hearing to the parties. Further, the assessee is directed to appear before the learned CIT(A) on all the dates of hearing as may be fixed without any default. As a result, grounds raised by the assessee are allowed for statistical purposes.

7. In the result, the appeal by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 04/03/2024

**Sd/-**  
**B.R. BASKARAN**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**SANDEEP SINGH KARHAIL**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 04/03/2024**

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Mumbai; and
- (5) Guard file.

True Copy  
By Order

Assistant Registrar  
ITAT, Mumbai