

IN THE INCOME TAX APPELLATE TRIBUNAL “F” BENCH MUMBAI
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER
ITA No.326/MUM/2024
Assessment Year: 2016-17

Rajesh Jugraj Madhani 301, Saloni Apartment, 56 th Road, T.P.S. III, Borivali (West), Mumbai – 400092 (PAN : AAHPM3871E)	Vs.	Deputy Commissioner of Income Tax – 4(3), Mumbai
(Appellant)		(Respondent)

Present for:

Assessee : Shri Jay Thacker, FCA
Revenue : Ms. Rajeshwari Menon, Sr.DR
Date of Hearing : 27.05.2024
Date of Pronouncement : 30.05.2024

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi, vide order no. ITBA/NFAC/S/250/2023-24/1059539621(1), dated 10.01.2024 passed against the assessment order by the Assistant Commissioner of Income Tax, Circle 10(2)(2), Mumbai, u/s. 143(3) of the Income-tax Act(hereinafter referred to as the “Act”), dated 10.12.2018 for Assessment Year 2016-17.

2. Grounds taken by the assessee are reproduced as under:

“1.0 On facts and circumstances of the case and in law, Ld. CIT(A) erred in passing the appeal order ex-parte without allowing the adequate opportunity of being heard and without considering the bonafide reasons that had precluded the appellant to participate in appeal proceeding;

2.0 On facts and circumstances of the case and in law, Ld. CIT(A) erred in not deciding the grounds of appeal on merits and erred in ignoring the submissions and documents filed on assessment record;

3.0 On facts and circumstance of the case and in law, Ld. CIT(A) erred in confirming the disallowance of interest u/s. 57(iii) of Rs. 1,98,02,075/-, on restricting the interest expense to the extent of interest income earned during the year;

4.0 The Ld. CIT(A), before making the disallowance of interest of Rs.1,98,02,075/-, ought to have considered the vital facts, being;

a) The interest expense had been paid for the purpose of making/ earning the interest income;

b) The mere non-realization of interest income from defaulted borrowers (lendees) would not disentitle the appellant to claim the interest expense;

5.0 On facts and circumstance of the case and in law, Ld. CIT(A) erred in confirming the disallowance of interest paid of Rs.86,47,610/- on unsecured loans held as non-genuine in earlier assessment year;

6.0 Without prejudice, Ld. CIT(A), while allowing the interest paid to the extent of interest income, failed to considered the disallowance of interest made on non-genuine loans of Rs.86,47,610/- and resultantly, the balance interest paid of Rs.1,11,54,465/- (1,98,02,075 - 86,47,610) could utmost be disallowed.”

3. Brief facts of the case as culled out from records are that the assessee filed his return of income on 39.07.2016 reporting a total income at Nil. Assessment was completed u/s.143(3) by making a disallowance Rs.1,98,02,075/- u/s. 57(iii) out of interest paid on unsecured loans and making an addition of Rs.86,47,610/- towards interest paid to loanees. Aggrieved, assessee went into appeal before the CIT(A).

3.1. Ld. CIT(A) summarily dismissed the appeal of the assessee on account of non-prosecution on the part of the assessee. While dismissing the appeal, ld. CIT(A) has observed that assessee was issued and served with several notices for hearing which remained un-complied. Ld. CIT(A) also observed that assessee sought adjournment by submitting about the occupancy of his chartered accountant being pre occupied with GST annual returns. Owing to no response from the assessee, ld. CIT(A) without adjudicating on the grounds dismissed the appeal of the assessee. Aggrieved, assessee is in appeal before the Tribunal.

4. Before us, ld. Counsel for the assessee specifically referred to ground no.1 and 2 raised before us, whereby the first appeal has been dismissed ex-parte without considering the grounds, statement of facts and material on record.

4.1. It was thus submitted that the matter may be remanded back to the file of ld. CIT(A) for *denovo* meritorious adjudication by taking into consideration the submissions already on record. It was also prayed that reasonable opportunities may be given to the assessee to make any further submissions, if so required.

5. Per contra, ld. Sr.DR raised no objection on the prayer made by the ld. Counsel.

6. We have heard the rival contentions and perused the material on record. At the first appellate stage, there are lapses on the part of the assessee to attend the hearings for an effective and meritorious disposal of its appeal. Also, ld. CIT(A) has dismissed the appeal for lack of prosecution.

6.1. Section 250 of the Act provides for procedure to be adopted while disposing of the appeal by the Ld. CIT(A). Sub-section (4) of section 250 of the Act provides that the Ld. CIT(A) may, before disposing of any appeal, make such further inquiry as he thinks fit, or may direct the Assessing officer to make further inquiry and report the result of the same to the Commissioner (Appeals). Further, sub-section (6) provides that the CIT(A) shall pass an order in writing and shall set the points for determination, the decision thereon and the reasons for the decision. Keeping in mind the provision of sections 250 of the Act, it is incumbent upon the Ld. CIT(A) to pass a speaking order on the merits of the case by examining, verifying and analyzing the material on record.

6.2. Considering the prayer made before us, in the interest of justice and fair play, we find it appropriate to remit the matter back to the file

of ld. CIT(A) for *denovo* meritorious adjudication on the grounds of the appeal taken at the first appellate stage. We also direct the assessee to be diligent and cooperative in attending the hearings and make his submissions for expeditious and effective disposal of the appeal. He should not seek adjournments unless warranted by compelling reasons.

6.3. Since the matter is restored to the file of Ld. CIT(A) for meritorious adjudication by passing a speaking order in terms of our observations made hereinabove, 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 observations herein made by us in remanding the matter back to the file of Ld. CIT(A) will not impair or injure the case of the Revenue nor will it cause any prejudice to the defense/explanation of the assessee.

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

Order is pronounced in the open court on 30 May, 2024

Sd/-
(Pavan Kumar Gadale)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 30 May, 2024

MP, Sr.P.S.

Copy to :

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

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai