

IN THE INCOME TAX APPELLATE TRIBUNAL  
Mumbai "SMC" Bench, Mumbai.

Before Shri Narender Kumar Choudhry (JM) & Smt. Renu Jauhari (AM)

I.T.A. No. 473/Mum/2021 (A.Y. 2012-13)

Dr. Kusumchandra S. Ambhure 1, Rudra Ansh CHS Sector 48A, Seawood Navi Mumbai-400706.  PAN : ACAPA4839K (Appellant)	Vs.	ITO-16(2)(5) Aayakar Bhavan M.K. Road Mumbai-400 020.  (Respondent)
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Assessee by	None
Department by	Shri Nagnath Pasale
Date of Hearing	28.05.2024
Date of Pronouncement	31.05.2024

ORDER

Per Narender Kumar Choudhry (JM) :-

In the instant case, though the assessee has filed adjournment petition, however we observe that the impugned order passed by the Id. CIT(A) is an ex-parte order and therefore we are inclined to reject the request for adjournment and to decide the appeal under consideration on the basis of the assessment order and the impugned order.

**2.** In the instant case, the Assessing Officer vide assessment order dated 6.12.2017 under section 143(3) read with section 263 of the Income Tax Act ultimately made following additions/disallowances:

- (i) Rs. 1,05,00,000/- addition for unapproved loan treated as unexplained investment under section 69 of the I.T. Act.

- (ii) Rs. 8,87,475/- disallowance of interest paid on security loan.
- (iii) Rs.3,06,084/- disallowance of interest paid on utilizing interest bearing funds.
- (iv) Rs. 1,206/- addition on account of less interest offered as per 26AS.

**3.** The assessee being aggrieved challenged the aforesaid additions except the addition of Rs. 1,206/- less interest offered as per 26AS, before the Id. commissioner. However, as it appears from the impugned order in spite of sending various notices during the period from 25.2.2019 to 3.3.2020, the assessee except filing adjournment letter on one occasion, made no compliance and therefore in the constrained circumstances, the learned CIT(A) decided the appeal of the assessee by passing the ex-parte impugned order.

**4.** We have given thoughtful consideration to the peculiar facts and circumstances of the case. Learned DR though emphasized for affirmation of the impugned order, however, we observe that the learned Commissioner in the absence of specific reply/documents was unable to decide the appeal filed by the assessee, in its right perspective and in proper manner, but in fact was constrained to decide the appeal as an ex-parte on the basis of grounds of appeal and statement of facts only. It is also a fact that lastly the appeal of the assessee was fixed on 12.3.2020 by the learned CIT(A) which is admittedly was Corona Period (Covid-19) and the learned Commissioner passed the impugned order on 18.3.2020 when the Covid period was going on. Hence, considering all the facts and circumstances in totality, we are inclined to set aside the impugned order and consequently remanding the instant case to the file of the learned Commissioner for decision afresh. Suffice to say by affording reasonable opportunity to the assessee to substantiate its claim.

The assessee is also directed to cooperate with the appellate proceedings and file relevant reply/documents as would be essential/required by the learned Commissioner for proper decision of the case. In case of further default, the assessee shall not be entitled for any leniency.

**5.** In the result, the appeal filed by the assessee stands allowed for statistical purposes.

Order pronounced in the open court on 31<sup>st</sup> May, 2024.

Sd/-  
(Renu Jauhari)  
Accountant Member

Sd/-  
(Narender Kumar Choudhry)  
Judicial Member

Mumbai.; Dated : 31/05/2024

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai

PS