

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

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

I.T.A. No. 4726/Mum/2023 (A.Y. 2011-12)  
I.T.A. No. 4725/Mum/2023 (A.Y. 2012-13)

Latif Tujar Shaikh Room No. A-12A, Behram Nagar Kherwadi Road Rajat Chawl, Bandra East, Mumbai-400051.  PAN : BRQPS1956M (Appellant)	Vs.	ITO-Ward 23(2)(1) Piramal Chambers Lalbaug Mumbai-400 012.  (Respondent)
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Assessee by	Shri Kalpesh Turalker
Department by	Shri Nagnath Pasale
Date of Hearing	28.05.2024
Date of Pronouncement	30.05.2024

ORDER

Per Narender Kumar Choudhry (JM) :-

As the issue involved in both the appeals are identical, therefore for the sake of brevity, we are inclined to decide these appeals under consideration by this composite order and by taking into consideration ITA No. 4726/Mum/2023 as a lead case, result of the same shall apply mutatis mutandis to both appeals under consideration.

**2. ITA No. 4726/Mum/2023:** In this case, the Assessing Officer vide assessment order dated 5.12.2018 under section 144 read with section 147 of the Income Tax Act (in short "Act") made the addition of Rs. 16,44,437/- on account of credit entries made in the bank account maintained during assessment year under consideration, which remains as unexplained and consequently added the same in the income of the assessee.

**3.** The assessee being aggrieved with the assessment order and making the addition by the Assessing Officer preferred first appeal before learned Commissioner who though afforded various opportunities by sending notice and fixing the case for *hearing*, however, the assessee made no compliance. Therefore, in the constrained circumstances, specifically in the absence of any reply/documents which the assessee failed to file, decided the appeal as ex-parte and ultimately affirmed the addition by dismissing the appeal of the assessee. Though conduct of the assessee does not seem to be reasonable, however, considering the peculiar facts and circumstances, as the learned Commissioner in the absence of relevant reply/documents which the assessee has failed to file, failed to decide the issue in its right perspective and in proper manner and therefore for the just decision of the case and for substantial justice, we inclined to set aside the impugned order and consequently remanding the instant case to the file of the Id. CIT(A) for decision afresh subject to deposit of Rs. 2000/- in the account of Prime Minister National Relief Fund (PMNRF) within 15 days from receipt of this order. Suffice to say, the learned Commissioner shall afford reasonable opportunity to the assessee to substantiate its claim.

**4.** We also direct the assessee to cooperate with the appellate proceedings and file the relevant reply/documents as would be essential/required by the Id. Commissioner for proper decision of the case. We clarify that in case of further default, the assessee shall not be entitled for any leniency.

**5.** Consequently, the appeal filed by the assessee i.e. ITA No. 4726/Mum/2023 is allowed.

**6.** In the result, both the appeals filed by the assessee under consideration are allowed on the same terms as enumerated in the judgement of ITA No. 4726/Mum/2023.

Order pronounced in the open court on 30<sup>th</sup> May, 2024.

Sd/-  
(Renu Jauhari)  
Accountant Member

Sd/-  
(Narender Kumar Choudhry)  
Judicial Member

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