

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

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
SMT. RENU JAUHARI, ACCOUNTANT MEMBER**

**ITA No.3236/M/2023
Assessment Year: 2018-19**

Shri Pushpendra Bansal, 202, 2 nd Floor, Morya Blue Moon, New Link Road, Mumbai – 400 053 PAN: ABIPB2394M	Vs.	ACIT-CC-3(1), Room No.1924, 19 th Floor, Air India Building, Nariman Point, Maharashtra- 400 021
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Vinit Mangal, A.R.
Revenue by : Shri Himanshu Kumar, J. CIT

Date of Hearing : 13 . 05 . 2024
Date of Pronouncement : 30 . 05 . 2024

O R D E R

Per : Narender Kumar Choudhry, Judicial Member:

This appeal has been preferred by the assessee against the order dated 14.07.2023, impugned herein, passed by the National Faceless Appeal Center (NFAC)/ Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) under section 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2018-19.

2. In the instant case, the assessee by filing an adjournment application dated 13.05.2024 has sought adjournment of the case without mentioning any reason. Though we are inclined to grant the adjournment, however, perusing the impugned order, we observe that the same is an ex-parte order and based on non-prosecution, hence we deem it appropriate to dismiss the application for adjournment and to proceed with the case in hand.

3. The Assessing Officer (AO) vide assessment order made the addition of Rs.8,00,000/- taxable under section 56(2)(vii) of the Act allegedly received as unsecured loan in the preceding years. The assessee, being aggrieved, challenged the said addition before the Ld. Commissioner, who, though afforded various opportunities to the assessee by sending notices, however, the assessee availed none and therefore in the constrained circumstances and in the absence of relevant reply/submission/documents which the assessee has failed to file, the Ld. Commissioner decided the first appeal filed by the assessee by dismissing the same on non prosecution. Against the dismissal of the appeal of the assessee on non prosecution, the assessee has preferred the instant appeal on various grounds including ground No.1, whereby the assessee has claimed that the Ld. Commissioner has erred in law and facts in passing an ex-parte appellate order without giving the assessee an adequate opportunity of being heard and therefore the matter may kindly be sent to the file of the Ld. Commissioner (Appeals).

4. We have given thoughtful considerations to the peculiar facts and circumstances of the case. We have observed above that though various opportunities have been afforded by the Ld. Commissioner by issuing notices to the assessee, however, the assessee neither appeared nor filed any relevant reply/submission/documents.

Therefore, the Ld. Commissioner in the constrained circumstances dismissed the appeal of the assessee for non-prosecution and thus we are not convinced by the claim of the assessee that no adequate opportunity of being heard was given to the assessee to represent its case and consequently the assessee is not entitled for any leniency.

We observe that the Ld. Commissioner in the absence of relevant reply/submission/documents failed to decide the appeal in its right perspective and proper manner and on merits as well, therefore, considering the facts in totality, we, for the just decision of the case and for the substantial justice, are inclined to set aside the impugned order and consequently remanding the instant case to the file of the Ld. Commissioner for decision on merits, suffice to say by affording reasonable opportunity to the assessee to substantiate its claim.

5. We also deem it appropriate to direct the assessee to file the relevant reply/submission/documents before the Ld. Commissioner as would be essential/required for proper adjudication of the case. We clarify that in case of subsequent default the assessee shall not be entitled for any leniency. Consequently, the case is accordingly remanded to the file of the Ld. Commissioner.

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

Order pronounced in the open court on 30.05.2024.

Sd/-
(RENU JAUHARI)
ACCOUNTANT MEMBER

Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.