

**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.48/M/2024
Assessment Year: 2014-15**

Shri Ravi Bansilal Darira, Chataiwala Building, Yusuf Meharali Road, Maharashtra – 400 003 PAN: AAHPD2499M	Vs.	Income Tax Officer- 17(3)(1), Aayakar Bhavan, Mumbai, Maharashtra – 400 020
(Appellant)		(Respondent)

Present for:

Assessee by : Shri B.N. Rao, A.R.

Revenue by : Shri C.T. Mathews, Sr. DR

Date of Hearing : 21 . 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 12.12.2023, 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. 2014-15.

2. In the instant case, the Assessing Officer (AO) vide assessment order dated 28.12.2016 under section 143(3) of the Act assessed the total income of the assessee to the tune of Rs.35,24,310/- as against the total income of Rs.11,45,000/- as declared by the assessee by filing his return of income on 29.11.2014 and also made the disallowance of Rs.23,79,309/- under section 36(1)(iii) of the Act on the pretext that interest bearing funds were not used for the purpose of business.

3. Though the assessee challenged the said addition/disallowance before the Ld. Commissioner, however, in spite of sending four notices to the assessee, the assessee except seeking adjournment on one occasion i.e. 28.11.2023 neither made any compliance nor filed any reply/documents, therefore, in the constrained circumstances the Ld. Commissioner dismissed the appeal of the assessee and affirmed the addition under challenge by holding as under:

“6.1 During the appellate proceedings, numerous opportunities were provided to the appellant to substantiate the grounds of appeal/ statement of facts with evidences. However, the appellant has failed to produce or furnish any evidence in support of his ground of appeal. It is clear that the appellant has not discharged the burden of proof as required under the respective provisions to establish any commercial expediency for advancing of such interest free loan to various parties. In the absence of any reply/evidence, I confirm the disallowance of interest debited to P&L account u/s 36(1)(iii) of the Act to this extent of Rs. 2379309/- made by the A.O in the assessment order as discussed above. Hence the appeal is not allowed.”

4. We have given thoughtful considerations to the peculiar facts and circumstances of the case and observe that as the assessee failed to discharge its onus/burden of proof as required under the respective provisions to establish any commercial expediency for advancing of interest free loan to various parties and therefore in the

absence of any reply/evidence the Ld. Commissioner was constrained to confirm the disallowance of interest as involved and therefore the assessee do not deserve any leniency. However, considering the facts and circumstances again as the Ld. Commissioner was unable to decide the issue involved in its right perspective and in proper manner specifically in the absence of relevant reply/documents and therefore for the just decision of the case and for the ends of substantial justice, we are inclined to set aside the impugned order and consequently remanding the instant case to the file of the Ld. Commissioner for decision afresh on merits, suffice to say by affording reasonable opportunity to the assessee to substantiate his claim.

5. We also direct the assessee to cooperate with the appellate proceedings and to file the relevant submissions/documents which would be essential/required by the Ld. Commissioner for proper adjudication of the case. We clarify that in case of further default the assessee shall not be entitled for any leniency.

6. The case is remanded accordingly.

7. 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.