

**IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH MUMBAI**  
**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER**  
**AND**  
**SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.314/MUM/2024**  
**Assessment Year: 2013-14**

Rajesh Jugraj Madhani 301, Saloni apartment, 56 <sup>th</sup> Road, T.P.S. III, Borivali (West), Mumbai – 400092 (PAN : AAHPM3871E)	Vs.	Deputy Commissioner of Income Tax, Circle 2(2)(1), Mumbai
<b>(Appellant)</b>		<b>(Respondent)</b>

**Present for:**

Assessee : Shri Jay Thakkar, CA  
Revenue : Smt. Mahita Nair, Sr. DR

Date of Hearing : 12.06.2024  
Date of Pronouncement : 21.06.2024

**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/250/2023-24/1058913085(1), dated 20.12.2023 passed against the assessment order by Deputy Commissioner of Income Tax - 10(2)(2), Mumbai, u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”), dated 21.03.2016 for AY 2013-14.

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

1. *“On the facts and circumstances of the case, CIT(A) erred in confirming the Penalty levied u/s. 271(1)(c) of the Act of Rs.1,52,084.*

2. a) *On the facts and circumstances of the case, the AO erred in levying the penalty though the AO has not specified under which limb, the penalty proceedings were initiated in the notice issued u/s.271(1)(c) dated 30/03/2022. The penalty levied under such circumstances is bad in law.*

b) *It is well settled law that the penalty proceeding Initiated without specifying the particular limb of the proceedings is bad in law.*

3. a) *On the facts and circumstances of the case and in law, the AO wrongly issue of the notice u/s. 271(1)(c) of the Act though no proceedings have been initiated in the assessment order which is a required to be initiated & mentioned in the assessment order.*

b) *The AO erred in issuing notice u/s.271(1)(c) on 30/03/2022 i.e. after the assessment order passed on 03/03/2022.*

4. a) *On the facts and circumstances of the case and in law. the assessment order passed u/s. 147 is bad in law since order dated 03/03/2022 is digitally signed on 30/03/2022 and DIN was taken on unsigned order. It is not clear as to date of taking DIN.*

b) *The penalty order passed u/ 271(1)(c) on bad assessment order which is bad in law is void ab initio.*

5. *On the facts and circumstances of the case and in law, the CIT(A) erred in confirming the penalty without considering detailed submission and judgements cited during the appeal proceedings. The order passed by the CIT(A) without considering the merits of the case is bad in law.*

6. a) *On the facts and circumstances of the case and in law, there is no concealment of Particulars of Income as the full particulars of Income were available before the department in the Form 26AS and AIS.*

b) *The appellant submits that no addition has been made in the Return of Income filed, therefore, no penalty can be levied.*

c) *The appellant further submits that several judicial pronouncements have held that bonafide mistakes do not constitute the concealment of Income.”*

3. In ground No. 1 and 2, assessee has contested that Ld. CIT (A) has passed an *ex parte* order and without dealing the appeal on merits ignoring the submissions and documents filed by the assessee in the

course of assessment proceedings. Accordingly, we first deal with these two grounds taken by the assessee.

4. Brief facts are that assessee filed his return of income on 31.7.2030 reporting total income at nil. The return was revised on 31.03.2015 reporting total income at ₹ 1,18,90,340/-. During the course of assessment proceedings, assessee was called upon to furnish the details of unsecured loans taken from 29 parties totalling to ₹ 6,45,60,000/-. Assessee furnished the required details and documents to establish the identity, creditworthiness and genuineness of the transaction of these loans. Assessee also claims that he has filed confirmations in respect of few parties along with PAN, copies of income tax returns and bank statement. However, ld. Assessing Officer disregarded the submissions made by the assessee and made an addition of ₹ 6,39,10,000/- from 25 parties as unexplained cash credit u/s. 68 of the Act. As a consequential effect of treating these loans as unexplained cash credit, ld. Assessing Officer also disallowed interest component in respect of these loans amounting to ₹ 35,04,689/-. Aggrieved, assessee went in appeal before the Ld. CIT(A).

5. It is worth noting a fact that assessment order was passed on 21.03.2016 and assessee filed his appeal before the CIT(A) on 26.04.2016. Order passed by Ld. CIT(A) is dated 20.12.2023 for which the first notice of hearing was issued on 12.03.2020 i.e., almost after 4 years of the filing of appeal by the assessee. Subsequent three notices fixing the date of hearing were issued during the pandemic of COVID-19. Last notice was issued on 28.11.2023 requiring assessee to file his submission latest by 05.12.2023. The appeal of the assessee was dismissed by holding that he failed to substantiate his case and provide any plausible explanation or evidence to support his claims during the appellate proceedings. Aggrieved, assessee is in appeal before the tri-

bunal challenging the approach adopted by Ld. CIT(A) passing an *ex parte* order and not considering the submissions which formed part of the assessment records.

6. Ld. counsel for the assessee submitted for remitting the matter back to the file of Ld. CIT(A) for denovo meritorious adjudication of the grounds taken by the assessee at the first appellate stage.

7. Per contra, Ld. Sr. DR submitted that assessee failed to substantiate his claim and therefore Ld. CIT(A) had no option but to dismiss the appeal *ex parte*.

8. We have heard the rival contentions and perused the material on record. From the assessment order, we note that assessee had made his submissions on the explanations called for in respect of loan transactions undertaken by the assessee. We also take note of the fact that appellate proceedings were initiated after almost 4 years of the institution of appeal and thereafter much of the time had gone during the period of pandemic.

9. Considering the facts on record and the circumstances of the case we are inclined to accept to prayer made by the Ld. counsel of the assessee to submit the matter back to the file of Ld. CIT(A) for de novo meritorious adjudication. We direct the ld. CIT(A) to provide reasonable opportunities to the assessee for making his submissions and also call for remand report from the Assessing Officer, if so required. We direct the assessee also, to be diligent in attending the hearings fixed for the appeal and assist in its expeditious and effective disposal. Assessee should not seek adjournments unless warranted by compelling reasons.

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

Order is pronounced in the open court on 21 June, 2024

Sd/-  
(Narender Kumar Choudhry)  
Judicial Member

Sd/-  
(Girish Agrawal)  
Accountant Member

***Dated: 21 June, 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