

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C", MUMBAI

**BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**

ITA No. 1068/Mum/2024 (A.Y. 2018-19)

Piyush Gangji Chheda,
1st floor, Sunshine Plaza,
Naigaum Cross Road,
Dadar (East)
Maharashtra – 400 014
PAN: AAABPC3159M

..... Appellant

Vs.

ITO/NFAC/ACIT – 8(2)(1)
Aayakar Bhavan,
Delhi

..... Respondent

Appellant by : None
Respondent by : Ms. Madhu Malti Ghosh, Ld. DR
Date of hearing : 10/06/2024
Date of pronouncement : 14/06/2024

ORDER

PER GAGAN GOYAL, A.M.:

This appeal by assessee is directed against the order of National Faceless Appeal Centre (for short "NFAC") dated 09.02.2024 u/s. 250 of the Income Tax

Act, 1961 (in short 'the Act') for A.Y. 2018-19. The assessee has raised the following grounds of appeal:-

GROUND NO. 1: EX-PARTE ORDER

1. The Ld. CIT (A) erred in passing an Order and without giving the Assessee sufficient opportunity of being heard.

2. The Ld. CIT (A) failed to take into consideration the mindless assessment made by the Assessing Officer, where he, without any logical and legal basis, erred in not allowing any deduction (pertaining to Interest expenditure of Rs. 13, 17, 69,069/-) under any head of income whatsoever, although the nexus between the income earned and expenditure claimed was clearly established during the assessment proceedings.

GROUND NO. 2: DEDUCTION U/S. 57(iii) OF RS. 6, 54, 03,244/-

1. The Ld. CIT(A) erred in confirming the addition made by the AO, in respect of the Deduction claimed u/s. 57(iii), of the proportionate Interest expenditure of Rs. 6,54,03,244/ and failed to take into consideration the direct nexus between the Interest income earned and the Interest Expenditure claimed.

2. Without prejudice, the Ld. AO erred in not allowing the Assessee to claim a deduction u/s. 37, against the Business income earned, since it is clear that either the loans were utilized to give loans to outsiders or the same was utilized for the purpose of its share trading business or to introduce capital in the partnership firm.

GROUND NO. 3: DEDUCTION U/S. 37 OF RS. 6, 63, 65,825/-

1. The Ld. CIT(A) erred in confirming the addition made by the AO, in respect of the deduction claimed u/s. 37, of the proportionate Interest expenditure of Rs. 6,63,65,825/- and failed to take into consideration that a part of the Unsecured Loans have been utilized for the share trading business and capital introduction in partnership firm (from which Assessee has earned taxable Interest on capital, and thus the Interest expenditure ought to be allowed as a deduction u/s. 37 under the head 'Business Income'.

2. Without prejudice, the learned AO erred in making an addition of Rs. 2,35,383/-, being income already assessed to tax under the head Income from House property and therefore any further addition would amount to double taxation.

2. The brief facts of the case are that assessee is individual engaged in the business of shares. The assessee has filed its return of income on 31.10.2018 declaring total income at Rs. 1,78,22,500/-. The case was selected for scrutiny and after verification the AO disallowed a sum of Rs. 6,54,03,244/- u/s. 57(iii) of the

Act against income from other sources and also disallowed interest claim under the business income of Rs. 6,63,65,825/-. The assessee being aggrieved with this order of AO preferred an appeal before the Ld. CIT (A) who in turn dismissed the appeal of the assessee on the ground of non-appearance.

3. We have gone through the order of AO, order of the Ld. CIT (A) and submissions of the assessee alongwith grounds raised before us. It is observed vide para 4 of the Ld. CIT (A)'s order that following notices were issued to the assessee, but there was no compliance by the assessee as under:-

Sr. No.	Date of issue of hearing notice u/s 250	Date of fixing hearing	Sent by /through	Remarks
1	12/08/2021	27/08/2021	ITBA	Non Compliance
2	27/12/2023	11/01/2024	ITBA	Non Compliance
3	15/01/2024	23/01/2024	ITBA	Non Compliance
4	23/01/2024	31/01/2024	ITBA	Non Compliance

4. It is further observed that notices were sent on an e-mail id and the correctness of the same has not been challenged by the assessee. It is observed that in Form No. 35, assessee submitted email ID **finance@princeswr.com** whereas in Form No. 36 before us, the email ID given was **mrugakshi@dmharish.com**. In view of the fact that appeal order was passed ex-parte, **although on merits relying on the records and documents available with him, but as there was no participation at the end of the assessee**, we deem it fit to restore the matter to the file of Ld. CIT (A) with a direction to communicate on the email IDs furnished by the assessee in Form No. 35 and 36. The assessee is

directed to check its email ID on a regular interval so that progress of the matter before the Ld. CIT (A) can be updated in his records for compliance purposes. In this era of digitization, all the communications are being done on the email addresses of both the sides and the assessee is changing his email id again and again, which creates confusion. With these observations and keeping the fact in mind that there is no finding on the facts of the case and law applicable, appeal of the assessee is allowed for statistical purposes with a direction to the Ld. CIT (A) to provide a reasonable opportunity of being heard to the assessee.

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

Order pronounced in the open court on 14th day of June, 2024.

Sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Mumbai, दिनांक/Dated: 14/06/2024

Dhananjay, Sr. PS

Sd/-

(GAGAN GOYAL)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

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BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai