

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

**BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER
AND
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER**

**ITA No.773/M/2024
Assessment Year: 2013-14**

Trio Assets Private Limited Unit-4, Peninsula, Corporate Park, G. K. Marg, Lower Parel- 400013. PAN: AACCT6231H	Vs.	Income Tax Officer Circle 8(3)(1), Aayakar Bhawan, Mumbai.
(Appellant)		(Respondent)

Present for:

Assessee by : Shri - None
Revenue by : Shri P.D. Chougule (Addl. CIT), SR. D.R.

Date of Hearing : 03 . 06 . 2024
Date of Pronouncement : 25 . 06 . 2024

ORDER

Per: Ratnesh Nandan Sahay, Accountant Member:

1. This appeal has been filed against the order of the Ld. CIT Appeal passed u/s 250 of the Income Tax Act [the 'Act' in short] vide DIN & Order No. ITBA/NFAC/S/250/2023-24/1057950995(1) Dated 15/11/2023 for the Assessment Year 2013-14.
2. The following grounds of appeal have been raised:

"1. On the facts and circumstances of the case and in law, the learned Assessing Officer has erred in disallowing the amount of Rs.1,85,10,523/- being the

interest on borrowed fund for acquiring the property or repayment of existing housing loan u/s 24(b), without considering the facts of the case.

2. On facts and in law, the AO erred in making a disallowance of administrative expense of Rs.15,21,094/- and depreciation of Rs.3,05,163/- by invoking the provision of section 37 of the Income Tax Act, 1961.

3. On the facts and circumstances of the case and in law, the learned Assessing Officer has erred in invoked section 37 of the income tax act 1961, the provision of section 37 is not applicable in our case.

4. On facts and circumstances of the case the assessing officer had not considered the submission filed on record at all and had proceeded with preset minds of making addition.

5. The appellant craves leave to add, alter, amend or modify any or all grounds till the disposal of the Appeal.”

3. The facts of the case, in brief, are that the appellant is a Private Limited Company and filing the return of income regularly. Assessee Company has filed the return of income for A.Y. 2013-14 on 28/09/2013 declaring a loss of Rs.(-)1,10,96,780/-. Earlier, the case was selected for scrutiny assessment u/s. 143(3) and assessment order was passed on 23/03/2016 by accepting the loss as claimed by the assessee. Further, the assessment was reopened u/s.147 of the income tax Act, 1961 and the order u/s. 147 read with section 144B of the Income Tax Act, 1961 was passed by the AO on 27.03.2022 and following additions were made: -
- a) The claim of interest amounting to Rs.1,85,10,523/- paid on borrowed fund for acquiring the property was disallowed without giving the benefit under section 24(b) of income Tax Act, 1961.

- b) The claim of administrative expenses of Rs.15,21,094/- and unabsorbed depreciation of Rs.3,05,163/- was disallowed on the ground that no business activity was carried out by the assessee during the assessment year under consideration as required u/s 28 and u/s 37 of the Act.
4. Aggrieved by the above order, the assessee filed appeal before the Ld. CIT (A) who decided the said appeal ex-parte on the ground that no compliance was made by the assessee despite having been given sufficient opportunities of being heard to file reply and produce material to support its claim that the AO has made additions on wrong premise.
5. During the course of hearing before us, the appellant submitted as under:
“It is pertinent to note that the assessee could not make any submissions during the proceedings of Ld. CIT (A). Non submission was due to unavailability of appellant’s accountant citing unavoidable circumstances. Consequently, the decision rendered by Ld. CIT (A) was without hearing assessee’s submission, arguments and disagreements.”
6. We have considered the submissions made by the appellant stated as above. We have also gone through the order of the Ld. CIT (A) and it is found that he has not decided the issue on merit as there was no compliance on the part of the appellant. We, therefore, find it proper to restore the matter back to the file of the Ld. CIT(A) to decide the issue on merit after providing adequate opportunity of being heard to the

appellant. The appellant is also directed to submit all relevant material/document before the Ld. CIT (A) to justify its claim.

7. In the result, the appeal is allowed in aforesaid terms.

Order pronounced in the open court on 25.06.2024.

**Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER**

**Sd/-
(RATNESH NANDAN SAHAY)
ACCOUNTANT MEMBER**

Mumbai, Dated: 25.06.2024.

Snehal C. Ayare, Stenographer

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

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.