

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, MUMBAI**

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER &
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER,**

**ITA No.1289/Mum/2024
(A.Y. 2017-18)**

Anuradha Jayadev Thackeray, 101, Dallas Apts, Kalanagar, Bandra East, Maharashtra - 400051	Vs.	ACIT, Circle 23(1) Piramal Chambers Mumbai - 400012
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: ABPPN6286M		
Appellant	..	Respondent

Appellant by :	Vipul Shah
Respondent by :	Raj Singh Meel

Date of Hearing	13.06.2024
Date of Pronouncement	24.06.2024

आदेश / O R D E R

Per Amarjit Singh (AM):

The present appeal filed by the assessee is directed against the order of Id. CIT(A) NFAC of the Income Tax Act, 1961 for A.Y. 2017-18. The assessee has raised the following grounds before us:

- “1. On the facts and circumstances of the case and in law, the learned CIT(A) erred in dismissing the appeal in utter violation of the principles of natural justice without appreciating the fact that the Appellant did not receive notices of hearing*
- 2. On the facts and circumstances of the case and in law, the learned CIT(A) erred in upholding the disallowance without appreciating the fact that the Assessing Officer had completed the assessment on presumption without any material in his possession*
- 3. On the facts and circumstances of the case and in law, the learned CIT(A) ought to have remanded the matter back to the file of the Assessing Officer for verification after accepting the fact that the assessment was completed in haste due to time barring date.*
- 4. On the facts and circumstances of the case and in law, the learned CIT(A) erred in dismissing the appeal without adjudicating the same on merits.*

5. *On the facts and circumstances of the case and in law, the learned CIT(A) erred in disallowing interest expense of Rs. 33,18,229/- u/s. 57 of the Income tax Act, 1961 ("the Act") without appreciating the fact that the same was paid for earning the income*
6. *On the facts and circumstances of the case and in law, the learned CIT(A) erred in not appreciating the fact that the Appellant had vide reply dated 02.11.2019 and 17 11.2019 provided all the details as called for by the learned Assessing Officer. The learned CIT(A) has wrongly dismissed the appeal by recording that the Appellant has failed to respond to any of the notices during the assessment proceedings*

The Appellant craves leave to add, amend or alter all or any of the ground of appeal before or at the time of hearing."

2. Fact in brief is that return of income declaring total income of Rs.43,23,010/- was filed on 26.03.2018. The case was subject to scrutiny assessment and notice u/s 143(2) of the Act was issued on 09.08.2018. The assessing officer finalised the assessment on 21.12.2019 after making disallowance of Rs.33,18,229/- u/s 57 of the Act. The assessee has claimed deduction of Rs.33,18,229/- u/s 57 of the Act against the income earned from other sources of Rs.75,10,037/- . The assessing officer has disallowed the claim of deduction on the ground that during the course of assessment assessee has not submitted any relevant documentary evidences to substantiate the claim of deduction u/s 57 of the Act.

3. Aggrieved, the assessee filed the appeal before the Id. CIT(A). The Id. CIT(A) has dismissed the appeal of the assessee without adjudicating on merit on the ground that assessee had not made compliance to the notices of hearing issued by the Id. CIT(A).

4. Before us the Id. Counsel submitted that at the time of assessment the assessing officer has not given sufficient time period to the assessee to produce the required document. He submitted that assessing officer has issued show cause notice on 12.12.2019 and asked to make compliance within a period of 3 days on 16.12.2019 and passed the assessment order on 21.12.2019. He further submitted that during the

course of appellate proceedings before the Id. CIT(A) the assessee has not received any notice issued by the CIT(A) NFAC.

5. Heard both the sides and perused the material on record. During the course of appellate proceedings before the Id. CIT(A) the appeal of the assessee was dismissed on the reason that assessee has failed to make compliance before the Id. CIT(A). In this regard, the assessee submitted that no notice has been received on the email referred in the Form No. 35 of the appeal filed by the assessee before the Id. CIT(A). During the course of assessment the deduction claimed by the assessee u/s 57 amounting Rs.33,18,229/- was disallowed and added back to the total income of the assessee on the ground that relevant supporting documentary evidences was not furnished by the assessee.

6. Looking to the above facts and circumstances it is evident that the case of the assessee both at the level of assessing officer and CIT(A) the case of the assessee was not decided on merit because of the various anomalies observed at the time of assessment proceedings and appellate proceedings as discussed supra in this order. Under the circumstances in order to decide the issue on merit it is required to consider and examine the relevant document and supporting evidences which the assessee could not produce because of the circumstances as discussed supra in this order. Normally whenever any irregularity krupt in the proceedings then after removing the irregularity proceedings is to be initiated from that stage but by remitting the issue to the Id. first appellate authority we would be multiplying the litigation because the Id. CIT(A) would call for remand report from the AO and proceeding would commence on two stages in order to avoid that situation we would deem it proper to set aside the order to the file of assessing officer for deciding afresh on merit after examination and verification of the relevant supporting document to be produced by the assessee in the set aside proceeding. It is needless to say that observation made by us will

not injure or impair the case of the AO and will not cause any prejudice to the defence explanation of the assessee, therefore appeal of the assessee is allowed for statistical purposes.

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

Order pronounced in the open court on 24.06.2024

Sd/-

(Rahul Chaudhary)
Judicial Member

Sd/-

(Amarjit Singh)
Accountant Member

Place: Mumbai

Date 24.06.2024

Rohit: PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT, Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.