

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

**BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER
ITA No. 1387/Mum/2024 (A.Y.2015-16)**

Late Kishore Bhajandas Bajaj

501, Krystal, 206, Waterfield
Road, Bandra (West),
Mumbai-400 050
PAN: AACPM8648J

..... Appellant

Vs.

DCIT Circle 4(1) (1)

R. No. 640, 6th floor,
Aayakar Bhavan,
M. K. Road,
Mumbai- 400 020

..... Respondent

Appellant by	:	Shri Mahesh Dhumne, Ld. AR
Respondent by	:	Shri P. D. Chougule, Ld. DR
Date of hearing	:	19/06/2024
Date of pronouncement	:	22/07/2024

ORDER

PER GAGAN GOYAL, A.M:

This appeal by assessee is directed against the order of National Faceless Appeal Centre (for short "NFAC") dated 08.02.2024 passed u/s. 250 of the Income Tax Act, 1961 (in short 'the Act') for A.Y. 2015-16. The assessee has raised the following grounds of appeal:-

1. *The learned CIT(A) erred in passing the ex parte order without sending the notice of appeal hearing fixing date of hearing on the email.id updated on the income tax e-filing portal. The notices were being sent on the email Id "dhruvi.tosani@balasaab.net". This email.id was in operational as the said employee had left the organization several years ago. In the appeal memo of Form 35 correct email.id i.e. accounts@badasaab.net was mentioned. However it appears no notice of hearing was sent on the said email.id due to which compliance to notice of hearing issued could not be made as no notices were received by the appellant.*
2. *The learned CIT(A) erred in confirming the addition made by the assessing officer without affording opportunity of being heard to the appellant by not sending notice of hearing either on the email.id registered in Income Tax e- filing portal or the email id given in the appeal memo thus not affording the appellant an opportunity of being heard which amounts to violation of principles of natural justice.*
3. *On the facts and in the circumstances of the case and in law the learned CIT (A) did not giving any direction in respect of disallowance of amount of Rs. 23,57,214/-claimed as interest deductible u/s. 57 allowable and claimed as deduction in computing income from other sources.*
4. *On the facts and in the circumstances of the case and in law the learned CIT(A) further erred in observing the fact that the assessing officer has not considered loss of Rs. 44,29,536/- while computing total income of Rs. 1,55,17,501/-. The loss of Rs. 44,29,536/- was computed by the assessing officer himself at page 8 of the assessment order which was to be considered for set off in computing total income.*
5. *On the facts and in the circumstances of the case and in law the learned CIT (A) erred in confirming the addition of Rs. 1, 25, 00,000/- as unexplained cash credit and in observing the fact that financial statements of Lender Pushpaleela Properties Pvt Ltd for F.Y. 2014-15 and acknowledgements of return of income for A.Y. 2015-16 though submitted on 26th December, 2017 were refused to be accepted by the assessing officer. These documents were immediately submitted to the assessing officer through speed post on same day. The learned assessing officer had even taken the amount borrowed from said party incorrectly and made addition incorrectly which was done by ignoring the confirmation ands copy of account which was filed.*
6. *On the facts and in the circumstances of the case and in law the learned CIT (A) erred in confirming the action of the assessing officer in making addition of Rs. 30, 17,501/- erroneously stating that interest paid to Pushpaleela Properties Pvt. Ltd. is disallowed*

even though it was clarified that no interest was paid to Pushpaleela Properties Pvt. Ltd. The interest of Rs.30, 17,501/- was paid to K.A. Enterprises and not to Pushpaleela Properties Pvt. Ltd. As no interest was made to Pushpaleela Properties Private Limited no disallowance on account of interest of Rs. 30, 17,501/- was warranted and hence same is required to be deleted. The borrowings from KA Enterprises were accepted and there being no addition made for borrowings, interest paid to them was allowable and the learned A.O. has incorrectly disallowed the same.

7. the appellant further craves leave to add, alter or amend the foregoing ground of appeal as and when considered necessary.

2. The brief facts of the case are that the assessee individual filed its return of income on 31.08.2015, declaring total loss at Rs. (-) 67, 86,750/-. The case of the assessee was selected for 'Limited Scrutiny' under CASS. One of the reasons for scrutiny was 'Large Deduction Claimed u/s. 57 of the Act.' During the year under consideration the assessee shown interest paid at Rs. 1,35,05,944/- and interest earned was Rs. 63,12,371/-. During the year under consideration the assessee accepted loans of Rs. 1.25 Cr. From M/s. Pushpaleela Properties Pvt. Ltd. Ultimately, the case of the assessee was assessed at Rs. 1,55,17,501/- against the returned loss of Rs. (-) 67,86,750/-. The assessee being aggrieved with this order of the AO preferred an appeal before the Ld. CIT (A), NFAC-Delhi on 19.01.2018. In the mean time the assessee concerned passed away on 17.03.2023, i.e. before passing the order u/s. 250 of the Act by the Ld. CIT (A). The Ld. CIT (A) passed his order on 08.02.2024. The Ld. CIT (A), as per his order sent notices on the e-mail available on ITBA portal vide dated: 13.01.2021, 27.09.2023, 22.11,2023 and 04.01.2024 for furnishing submissions and evidences in support of grounds of appeals, but there was no response from the assessee's side and ultimately, the appeal of the assessee dismissed on *ex-parte* basis.

3. The Legal Heir of the (Wife of the assessee) assessee being aggrieved with this ex-parte order of the Ld. CIT (A) preferred the present appeal before us. We have gone through the order of the AO, order of the Ld. CIT (A) and submissions of the assessee alongwith grounds taken before us. It is observed that the assessee provided e-mail id accounts@badasaab.net in form no. 35, whereas as per the assessee none of the notices mentioned (supra) ever sent on this e-mail id. Rather, notices were sent on dhruvi.tosani@badasaab.net which was non-operational as the employee to whom this e-mail belonged left the organisation. Moreover, the assessee himself passed away in the meantime. It is also observed that the legal heirs of the late assessee were suppose to intimate about the fact of death of the assessee and update herself as legal representative of the deceased assessee, which is not done. Considering the entirety of the facts, we deem it fit to restore the matter back to the file of the Ld. CIT (A) for fresh hearing of the matter after giving proper opportunity of being heard to the assessee. The legal heir of the deceased assessee is being directed to update the relevant facts on the record of the department with active e-mail id, which she uses to communicate. It is further directed to the legal heir of the deceased assessee to be vigilant and cooperative enough during the proceedings before the Ld. CIT (A). In these terms grounds raised by the assessee are allowed for statistical purposes.

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

Order pronounced in the open court on 22nd day of July, 2024.

Sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Sd/-

(GAGAN GOYAL)
ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated: 22/07/2024

Dhananjay, Sr. PS

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.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai