

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH “C”, MUMBAI
BEFORE SHRI. OM PRAKASH KANT, ACCOUNTANT MEMBER
AND
SHRI. RAJ KUMAR CHAUHAN, JUDICIAL MEMBER
ITA NO. 3237/MUM/2023 (A.Y: 2015-16)**

Pushpendra Bansal
202, 2nd Floor, Morya Blue Moon,
New Link Road, Mumbai – 400053.
PAN: ABIPB2394M

Vs. ACIT-CC-3(1), Mumbai
Room No. 1924, 19th Floor, Air
India Building, Nariman
Point, Mumbai – 400021.

(Appellant)

(Respondent)

Assessee Represented by : Shri. Parag Modi
Department Represented by : Smt. Pradnya R. Gholap
(Sr. DR)
Date of conclusion of Hearing : 20.08.2024
Date of Pronouncement : 30.08.2024

ORDER

PER RAJ KUMAR CHAUHAN (J.M.):

1. This appeal is filed by the appellant/assessee against the order dated 14.07.2023 of Learned Commissioner of Income Tax (Appeals), 51, Mumbai [hereinafter referred to as the “CIT(A)”], passed under section 250 of the Income Tax Act, 1961 [hereinafter referred to as “the Act”] for the A.Y. 2015-16.



2. Assessee has raised following grounds in this appeal:

1. *“That the Ld. CIT (A) erred in law and on facts in passing an ex-parte appellate order without giving the appellant an adequate opportunity of being heard. In view of the above, it is prayed that the matter may kindly be sent back to the file of Ld. CIT (A).*
2. *That the Ld. CIT (A) erred in law and on facts in not appreciating that the order passed u/s 147 is bad in law and void ab initio.*
3. *That the Ld. CIT (A) erred in law and on facts in not appreciating that the Ld. AO erred in law and on facts in invoking section 269T of the Income tax Act in respect of a wrong entry passed in the tally data found during the survey proceedings by the accountant without appreciating all the details / evidence furnished by the appellant during the assessment proceedings proving that the entry was a wrong entry and there was no repayment of loan of Rs. 50,00,000/- as alleged by the Ld. AO. Thus, the initiation of penalty u/s 271D for contravention of provisions of section 269T must be treated as invalid.*
4. *That the Ld. CIT (A) erred in law and on facts in not appreciating that the Ld. AO erred in law and on facts in invoking section 269T of the Income tax Act in respect of Rs. 16,12,032/- which is not repayment of loan and is also accepted by the revenue. Thus, when there is no repayment of loan, section 269T is not applicable and therefore, the initiation of penalty u/ s 271D for the said amount must be treated as invalid.*
5. *That the Ld. CIT (A) erred in law and on facts in not appreciating that the Ld. AO erred in law and on facts in considering the amount of Rs. 1,07,87,968/- received as unsecured loan in the preceding years as taxable u/s 56(2)(vii) of the Income tax Act. Thus, the addition must be deleted.*
6. *That all the above grounds are without prejudice to each other and are subject to further submissions, explanation, elaboration a furnishing of evidence/ documents etc at the time of hearing in writing or orally.*



7. *That the appellant craves leave to withdraw any of the grounds or take any other ground with the permission of the CIT (Appeals)."*
3. We have heard the Ld. AR on behalf of the assessee and Ld. DR on behalf of the revenue. At the very outset, it is argued that the impugned order has been passed ex-parte without affording opportunity to the appellant. It is further argued that the appellant filed an affidavit in support of his reasons for non-appearance before the Ld. CIT(A). It is argued that end of justice requires that an opportunity be given to the assessee/appellant to present his case before the Ld. CIT(A) and the impugned order be set aside and matter be restored to the file of the Ld. CIT(A).
4. The Ld. DR on the other hand defended the order of the Ld. CIT(A) stating that despite opportunity the appellant/assessee has failed to appear and make submissions/documents before the Ld. CIT(A).
5. We have considered the rival submissions and perused the record Section 250 sub section 2(a) of "*the Act*" provides as under:
 - “(2) *The following shall have the right to be heard at the hearing of the appeal: -*
 - a. *The appellant, either in person or by an authorised representative;*”



6. In support of his arguments, the assessee has filed an affidavit and contents of the affidavit in para no. 4 and 5 are relevant and reproduced as under:

“4. Reasons for Non-Appearence:

My absence from the hearing was due to an unexpected illness that prevented me from attending.

Detailed Explanation:

- *Illness:*

On May 3rd 2023 to 30th July, I was suddenly afflicted with a severe health issue that required immediate medical attention As my both knees are replaced, because of some acute complication, I was told complete Bed rest and all of sudden Diabetes's also started. This unexpected health problem incapacitated me and made it impossible for me to attend the hearing as scheduled.

- *Impact on Attendance:*

Due to this sudden illness, I was unable to manage or present my case before the Ld. CIT (A). The situation was unforeseen and created an unavoidable gap in my ability to attend the hearing.

5. Request for Setting Aside the Ex Parte Order:

Given the circumstances mentioned above, I respectfully request that the impugned ex parte order passed by the Ld. CIT (A) be set aside. I seek an opportunity to present my case and provide any additional evidence or documentation as required.”

7. We have considered the submissions and examined the facts and circumstances. It is settled law that no one should be condemned unheard



and the adjudicating authorities are bound to follow the principal of natural justice. In this case, the contents of the affidavit shows that the appellant was prevented by sufficient cause from appearing before the Ld. CIT(A) and in those circumstances the appellant/assessee needs to be given an opportunity for presenting his case before the Ld. CIT(A).

8. The impugned order is accordingly set aside and the matter is restored to the file of the Ld. CIT(A) for deciding the matter afresh after giving an opportunity to the assessee to present his case.
9. The assessee/appellant shall submit the necessary documents in support of his grounds of appeal before the Ld. CIT(A) within the period of 60 days from this order.
10. In the result, appeal filed by the assessee is allowed for statistical purposes in the above terms.

Order pronounced in the open court on 30.08.2024

Sd/-
(OM PRAKASH KANT)
(ACCOUNTANT MEMBER)

Sd/-
(RAJ KUMAR CHAUHAN)
(JUDICIAL MEMBER)



ITA No. 3237/Mum/2023
Pushpendra Bansal; A.Y. 2015-16

Mumbai / Dated 30.08.2024
Karishma J. Pawar, (Stenographer)

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mumbai