

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

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER  
AND  
SHRI OMKARESHWAR CHIDARA, ACCOUNTANT MEMBER**

**ITA No.367/M/2024  
Assessment Year: 2009-10**

<b>M/s. Capiqal Consultancy Private Limited,</b> 1107, Post Sai Village, Bhomnagar Taluka Panvel, District Raigarh, Maharashtra - 410206 <b>PAN: AAACM4143K</b>	Vs.	<b>DCIT,</b> Panvel Maharashtra - 410206
(Appellant)		(Respondent)

**Present for:**

Assessee by : None  
Revenue by : Shri R. R. Makwana, SR. D.R.

Date of Hearing : 22 . 08 . 2024  
Date of Pronouncement : 17 . 09 . 2024

**O R D E R**

**Per : Narender Kumar Choudhry, Judicial Member:**

This appeal has been preferred by the Assessee against the order dated 27.12.2023, impugned herein, passed by the Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) under section 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2009-10.

2. Despite sending notice for the date of hearing on 22.08.2024 at the address mentioned in Form-36, the Assessee neither

appeared nor filed any adjournment application; hence, we are inclined to decide this appeal by this ex-parte order.

**3.** In the instant case, the Assessing Officer (AO) vide order dated 14.12.2016 u/s 143(3) of the Act, has made the addition of Rs.6,20,000/- @ 4% of the alleged transaction of bogus unsecured loans and added the same in the income of the Assessee. The Assessee, being aggrieved, challenged the said addition before the then Ld. CIT (Appeals)-54, who upheld the aforesaid addition vide order dated 14.05.2018.

**4.** The Assessee, being aggrieved, challenged the aforesaid order dated 14.05.2018 before the Hon'ble Tribunal. The Hon'ble Tribunal vide order dated 29.09.2021 restored the matter back to the AO for adjudication afresh.

**5.** The AO vide assessment order dated 15.12.2022 again made the similar addition, against which the Assessee again preferred appeal before the Ld. Commissioner, who vide impugned order dated 22.12.2023 dismissed the appeal of the Assessee ; consequently upholding the addition.

**6.** The Assessee being aggrieved challenged the impugned order before the Tribunal.

**7.** Having heard the Ld. DR and given thoughtful considerations to the peculiar facts and circumstances of the case, we observe that the Ld. Commissioner issued two notices for the dates of hearing on 08.12.2023 and 20.12.2023 which remained un-complied with and therefore the Assessee does not deserve any leniency. However, it is a fact that the Ld. Commissioner failed to decide the appeal of the Assessee on merits, specifically in the absence of relevant

reply/submissions and documents and therefore considering the peculiar facts and circumstances in totality; for just decision of the case and substantial justice, we are inclined to set aside the impugned order and consequently remanding the instant case to the file of the Ld. Commissioner for decision afresh, suffice to say by affording reasonable opportunity to the Assessee to substantiate its claim. We clarify that in case of subsequent default, the Assessee shall not be entitled for any leniency. Thus, the case is remanded to the file of Ld. Commissioner accordingly.

**8.** In the result, the appeal filed by the Assessee is allowed for statistical purposes.

**Order pronounced in the open court on 17.09.2024.**

**Sd/-**  
**(OMKARESHWAR CHIDARA)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(NARENDER KUMAR CHOUDHRY)**  
**JUDICIAL MEMBER**

\* Kishore, Sr. P.S.

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

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.