

**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.264/M/2024  
Assessment Year: 2018-19**

<b>Shri Karan Tushar Shah,</b> 10AB/Pujari Niwas, MG Road, Vile Parle East, Mumbai – 400 057 Maharashtra <b>PAN: COYPS9371E</b>	Vs.	<b>Income Tax Officer-</b> 34(2)(1), Room No.216, Kautilya Bhavan, Bandra Kurla Complex, Mumbai – 400 051 Maharashtra
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Jigar Mehta, (Virtual)

Revenue by : Shri R.R. Makwana, Sr. D.R.

Date of Hearing : 21 . 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 04.08.2023, impugned herein, passed by the National Faceless Appeal Center (NFAC)/ 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. 2018-19.

**2.** At the outset, we observe that there is a delay of 107 days in filing the instant appeal, in respect of which the Assessee has claimed that due to the failure to receive appropriate guidance and in the process of change in the tax consultant the delay has been occurred, which was neither intentional nor malafide and therefore

the same is requested to be condoned. On the contrary the Ld. D.R. refuted the claim of the Assessee. Considering the reason as genuine, bonafide and un-intentional, we are inclined to condone the delay. Consequently, the delay of 107 days in filing the instant appeal is condoned.

**3.** Coming to the merits of the case, we observe that the Assessing Officer (AO) during the assessment proceedings has afforded at least six opportunities, however except making partial compliance on 06.04.2021, made no compliance and therefore in the constrained circumstances, the AO vide assessment order dated 18.08.2021 made two additions of Rs.10,47,560/- and Rs.31,10,638/- respectively on account of income from other sources u/s 56(2)(x)(B) of the Act and disallowance on account of deduction claimed.

**4.** The Assessee, being aggrieved with the aforesaid additions, challenged the same by filing first appeal before the Ld. Commissioner, however, could not file proper and substantive details/documents and therefore the Ld. Commissioner though affirmed the aforesaid addition of Rs.31,10,638/- which was claimed as deduction on account of interest paid on capital received from the partnership firm, however, deleted the addition of Rs.10,47,560/- which was made by the AO on account of income from other sources u/s 56(2)(x)(B) of the Act.

**5.** The Assessee being aggrieved is in appeal before us.

**6.** Having heard the parties and perused the material available on record and given thoughtful considerations to the peculiar facts and circumstances of the case, we observe that the Assessee before the Ld. Commissioner failed to justify the claim of interest payment of Rs.31,10,638/- against the interest income of same amount. It appears from the assessment order as well that before the AO as

well, the Assessee has not submitted any supporting documentary evidence such as partnership deed to substantiate the claim of deduction. Before us the Assessee by filing paper book has given a certificate that the documents as indexed in paper book such as partnership deed, capital account, loan confirmation were produced before the Ld. Commissioner but not before the AO because the assessment proceedings were carried out during the Covid-19 period when the entire Nation was on hold and therefore the Assessee may be given an opportunity to substantiate his claim. However it appears from the impugned order that a hearing notice was issued lastly on 25.07.2023 fixing the hearing on 01.08.2023, however, the Assessee made no response and eventually filed no reply and therefore the Ld. Commissioner in the constrained circumstances decided the appeal of the Assessee on the basis of material available on record. Considering the rival claim of the parties, at this juncture, we are inclined not to go into the controversy as to whether the Assessee has filed the relevant documents before the Ld. Commissioner or not as claimed by filing paper book before us, but from the orders passed by the Authorities below we observe that more or less both the Authorities below in the absence of specific reply and documents, failed to decide the issue involved which is under consideration i.e. the addition of Rs.31,10,638/- made on account of disallowance of deduction claimed as interest on capital receipt from partnership firm and therefore the instant issue remained adjudicated in its right perceptive and proper manner and thus for the just decision of the case and substantial justice, we are inclined remand the instant case to the file of the AO for decision afresh, suffice to say by affording reasonable opportunity of bearing heard to the Assessee. We clarify that in case of further default, the Assessee shall not be entitled for any leniency.

7. In the result, the appeal filed by the Assessee stands 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.