

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

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER**

**ITA No.3495/M/2024
Assessment Year: 2017-18**

M/s. Shivshakti Technology Pvt. Ltd., 16, Gandhi Bhavan, Gr. Floor, Chunam Lane, Lamington Road, Mumbai Maharashtra- 400 007 PAN: AAFCS2773J	Vs.	Deputy Commissioner of Income Tax-5(3)(1), Aaykar Bhavan, M.K. Road, Mumbai – 400020 Maharashtra
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Poojan Mehta, A.R.
Revenue by : Smt. Sujatha P. Iyengar, Sr. A.R.

Date of Hearing : 03. 09 .2024
Date of Pronouncement : 19. 09 .2024

ORDER

Per : Narender Kumar Choudhry, Judicial Member:

This appeal has been preferred by the Assessee against the order dated 13.06.2024, 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. 2017-18.

2. In the instant case, the Assessing Officer (AO) vide assessment order dated 19.12.2019 has made the additions of Rs.2,55,09,300/- &

Rs.3,27,01,457/- respectively on account of disallowance u/s 69A of the Act and adhoc addition. The Assessee, being aggrieved, though challenged the aforesaid additions before the Ld. Commissioner, however, despite sending various notices neither responded nor sought any adjournment and in fact not pursued its appeal. Therefore the Ld. Commissioner, in the constrained circumstances, specifically in the absence of submission and/or material which the Assessee has failed to file, decided the appeal of the Assessee as ex-parte and consequently affirmed the aforesaid additions by dismissing the appeal of the Assessee. The Assessee, being aggrieved, is in appeal before us.

3. At the outset, we observe that registry has raised an objection qua short payment of appeal filing fee by Rs.9,500/-. The Assessee before us though claimed that as the Ld. Commissioner has decided the appeal as ex-parte but not on merit, therefore the Assessee has made the payment of Rs.500/- as appeal filing fees but not the prescribed fee @ Rs.10,000/-, however agreed to deposit the remaining/short payment of Rs.9,500/- within 15 days from the date of hearing i.e. 03.09.2024, hence this controversy is resolved.

4. Coming to the merit of the case, we observe from the impugned order i.e. despite affording various opportunities, the Assessee neither availed the same nor filed any adjournment and/or relevant documents/reply and therefore the Ld. Commissioner decided the appeal of the Assessee for non-prosecution and dismissed the same in limine but not on merit. Though we are not appreciating the conduct of the Assessee for non-compliance however, considering the peculiar facts and circumstances in totality, as the issues involved before the Ld. Commissioner in the absence of relevant reply/submissions and documents remained to be adjudicated in its right perspective and proper manner, hence, for the just decision of the case and substantial justice, we are inclined to remand 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. We further clarify that this order would be subject to payment of short fee of Rs.9,500/-. **Thus, the case is remanded to the file of Ld. Commissioner accordingly.**

5. In the result, the appeal filed by the Assessee stands allowed for statistical purposes.

Order pronounced in the open court on 19.09.2024.

**Sd/-
(RATNESH NANDAN SAHAY)
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.