

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

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.3084/M/2024
Assessment Year: 2017-18**

Shri Jahanara Khurshid Khan, 1102, Onyx Nirmal Lifestyle Residency, LBS Marg, Mulund West, Mumbai – 400 080 PAN: CLYPK4593D	Vs.	Commissioner of Income Tax (Appeals) NFAC, Delhi Ward 41(2)2, Kautilya Bhavan, Mumbai
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Bhadresh Doshi Ld. AR,
(Virtually present)

Revenue by : Shri Nihar Ranjan Samal, Sr. DR.

Date of Hearing : 09 . 09 .2024

Date of Pronouncement : 23 . 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 08.05.2024, 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 17.05.2023 has made the additions of Rs.28,00,000/- & Rs.4,03,103/- on account of unexplained investment u/s 69 of the Act and income u/s 56(2)(vii)(b) of the Act respectively. The Assessee though challenged the aforesaid additions before the Ld. Commissioner, however, despite sending four notices, made no compliance and therefore in the constrained circumstances, the Ld. Commissioner decided the appeal of the Assessee as ex-parte and dismissed the same on non-prosecution vide impugned order dated 08.05.2024. The Assessee, by drawing our attention to acknowledgment qua filing of certain documents during the appellate proceedings on 02.12.2023, has submitted that the Assessee has complied in the appellate proceedings by filing various documents as it appears from the acknowledgment receipt. The Assessee also demonstrated that he requested for adjournments of case on 15-03-2024 and 30-04-2024 in response to the notices dated 11-03-2024 and 25-04-2024 requested for adjournments however the Ld. Commissioner did not accede to the requests of the Assessee and he proceeded to pass the impugned order without giving further opportunity. Therefore considering the reasons for non-compliance as genuine and bonafide, lenient view may be taken and the opportunity may be given to the Assessee by remanding the case to the Ld. Commissioner for decision afresh.

3. On the contrary the Ld. D.R. refuted the claim of the Assessee.

4. Considering the peculiar facts and circumstances in totality, as the Ld. Commissioner in the absence of relevant documents/submissions failed to decide the issues involved in its right perspective and proper manner and dismissed the appeal for non-prosecution but not on merits, hence for the just decision of the case and substantial justice, we are inclined to set aside the impugned order and consequently remanding the case to the file of the Ld. Commissioner for decision afresh, suffice to say by affording reasonable opportunity to the Assessee to substantiate his claim. We clarify that in case of subsequent default, the Assessee shall not be entitled for any leniency.

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

Order pronounced in the open court on 23.09.2024.

**Sd/-
(GIRISH AGRAWAL)
ACCOUNTANT MEMBER**

* Kishore, Sr. P.S.

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

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

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.