

**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. 4106/MUM/2023  
Assessment Year: 2014-15**

M/s Choudhari Construction Co.  
151/129, Sidharth Nagar, Road No. 5  
Behind Cinemax Cinema, S.V. Road,  
Goregoan (W),  
Mumbai-400062.  
**PAN NO. AABFC 2689 N**  
**Appellant**

**Vs.**

Asst. CIT Circle-31(1),  
Mumbai-400020.

**Respondent**

Assessee by : Mr. Sujeet Tabashi (Employee)  
Revenue by : Mrs. Pradnya R. Gholap, Sr. DR

Date of Hearing : 20/08/2024  
Date of pronouncement : 27/09/2024

**ORDER**

**PER OM PRAKASH KANT, AM**

This appeal has been preferred by the assessee against order dated 11.09.2023 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment year 2014-15, raising following grounds:

*1. Failure of Natural Justice*



*The Id CIT(A) erred in not considering the merits as it was fit case for Remand Report; therefore, on the failure of equity and justice, the appeal may be set-aside to the Assessing Officer.*

## 2. MERITS

*Ad-hoc (@20%) disallowance of direct and indirect expenses Rs. 1,89,86,4371-*

*The Id. CIT(A) erred in confirming the summary disallowance of various direct and indirect expenses without appreciating that the Appellant maintains proper books which are audited and tax audited; therefore, no ad-hoc disallowance is called for when books maintained had been accepted u/s. 145 and the same may be deleted.*

## 3. Addition disallowance of unexplained Rs.2,00,000/- cash credits-

*The Id. CIT(A) erred in confirming the addition u/s. 68 which was added ex-parte without appreciating that after accepting the additional evidence no Remand Report was called from the Assessing Officer; therefore, confirming the deemed addition is uncalled for and the same may be deleted.*

## 4. Interest on unsecured loans Rs.19,016/-

*The Id CIT(A) erred in confirming the interest on loan by failing to appropriate the genuinity of payment; therefore, the same may be deleted.*

## 5. Disallowance of Depreciation- Rs.1,77,517/-

*The Id. CIT(A) erred in confirming the disallowance which was a non-cash charge on the fixed asset addition; therefore, confirming the disallowance is prewise and the same may be deleted.*

## 6. Levy of penal interest

*The Appellant, on merits, denies its liability to penal interest.*

2. Briefly stated, facts of the case are that assessment in the case of the assessee has been passed u/s 144 of the Income-tax Act, 1961 (in short 'the Act') i.e. ex-parte manner.

3. On further appeal before the Ld. CIT(A), the assessee submitted that matter may be remitted back for considering the submission of the assessee. However, the Ld. CIT(A) has rejected



this request of the assessee on the ground that Ld. CIT(A) does not have any power of restoring the matter back to the AO. The finding of the Ld. CIT(A) is reproduced as under:

*“Decision: I have considered the submission of the appellant and gone through the AO's observation & decision and find that appellant has been provided ample opportunity to make necessary compliance before the assessing officer but despite sending one adjournment letter to the AO never complied afterwards. The problem put up at appeal stage is purely unproved and personal one and the ground taken thereof accordingly is treated as un-entertainable. Moreover either remand back the case to the file of AO or to allow further opportunity of hearing after completion of assessment is beyond the purview of the CIT Appeal.”*

4. We find that the Ld. CIT(A) under the provisions of the Act is required to decide the appeal on the ground raised by the assessee by way of reasoned order. Since the Ld. CIT(A) has not decided ground raised by the assessee on merit, therefore, the order of the Ld. CIT(A) on the issue in dispute is set aside and restored back to him for deciding afresh with liberty to the assessee for filing additional evidence in terms of Rule 46A of the Income-tax Rules, 1962. With above remark the ground No. 1 raised by the assessee is allowed for statistical purposes. Other grounds being on merit and therefore, not required to adjudicate at this stage.

5. In the result, the appeal of the assessee is allowed for statistical purposes.

**Order pronounced in the open Court on 27/09/2024.**

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

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



Mumbai;  
Dated: 27/09/2024  
Rahul Sharma, Sr. P.S.

**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,  
(Assistant Registrar)  
**ITAT, Mumbai**