

IN THE INCOME TAX APPELLATE TRIBUNAL

"G" BENCH, MUMBAI

BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No. 4370/MUM/2024

Assessment Year 2018-19

Mrs. Shruti Mayank Shah

5th Floor, A-Aidun Building,

1st Dhobi Talao Lane,

John Cresto Lane,

Mumbai – 400002

PAN: AAUPS9971L

..... Appellant

v/s

Dy. Commissioner of Income Tax,

Circle-19(3),

513, 5th Floor Piramal Chamber,

Lalbaugh, Parel,

Mumbai, Maharashtra – 400001

..... Respondent

Assessee by : None

Revenue by : Shri Bhangapatil Pushkaraj Ramesh - Sr.DR

Date of Hearing – 14/10/2024

Date of Order - 17/10/2024

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 28/06/2024 passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [*"learned CIT(A)"*], for the Assessment Year 2018-19.

2. In this appeal, the assessee has raised the following grounds: -

"The Appellant submits the following grounds of appeal which are separate / alternative and without prejudice to one another:-

Disallowance of Interest paid of Rs. 37,44,426/-:-

The CIT(A) has erred and was not justified in confirming disallowance of interest paid to Infina Finance Private Limited of Rs. 37,44,426/- against interest income earned from Partnership Firms. That income is offered for tax under the head Business and Profession.

The AO has made disallowance only on account of direct nexus between loan taken and given without properly justifying the facts of the case.

The Appellant's funds were invested in partnership firms and earning interest at the rate of 12% PA. Those fund were not immediately available to the appellant for investment opportunity. Therefore the Appellant has taken Short Term Loan from Financial Institution for investment in shares and securities through IPO at lower rate of Interest at 8% PA.

Since own funds are not available for investment hence the said loan was indirectly utilized for Business. Hence the said Interest paid is deductible u/s 36(1)(iii) of the income Tax act, 1961 against interest income earned from partnership firms.

2. Without prejudice to Ground No. 1, the Appellant submits that the said Interest otherwise is to be allowed as a deduction from Short Term capital gain earned from sale of 2 securities out of investment in 3 Securities.

3. Without Prejudice to Ground No. 1 and 2, the transaction of Investment in IPO through funding is made with intention to earn profit in short term and the same is in the nature of Business, hence the Income earned from those particular transactions are to be treated as Business Income. Consequently Interest paid to Financial Institution is to be allowed as deduction under Section 36(1)(iii).

Therefore, Interest paid to Financial Institution is either to be allowed under the head Business Income or Capital gain.

4. The CIT (A) has further erred and was not justified in confirming tax under section 115BBDA on Dividend received from Mutual Fund Rs. 10,930 which is exempt u/s. 10(35). In the preamble of the Assessment Order the said income is shown as Exempt u/s 10(35) but in the Computation sheet, the said exempt income is taxed U/s 115BBDA. Therefore, said Dividend income is to reduce from Total Income of the Appellant and consequently Tax on the said income is to be deleted.

5. The notices under section 250 for hearing was served through email but inadvertently the submission could not be uploaded on the given due date. Consequently, an opportunity is to be given to the appellant and

natural justice is to be provided. Hence, the present appeal is to be decided on merits or set aside the matter and referred back to CIT (A) for reconsideration on the basis of facts and circumstances of the case and in law."

3. We have considered the submissions of both sides and perused the material available on record. In the present case, at the outset, it is evident that the learned CIT(A) has passed the order ex-parte due to the non-appearance of/on behalf of the assessee. We further find that the learned CIT(A) merely on the basis of non-compliance with notices, dismissed the appeal filed by the assessee without adjudicating the grounds raised by the assessee on merits, as required under section 250(6) of the Act. We find that in CIT v/s Premkumar Arjundas Luthra (HUF), reported in [2016] 69 taxmann.com 407 (Bombay), the Hon'ble Jurisdictional High Court held that Commissioner (Appeals) cannot dismiss the appeal on account of non-prosecution of appeal by the assessee. Consequently, we deem it fit and proper to set aside the impugned order and restore the matter to the file of the learned CIT(A) for *de novo* adjudication of the appeal on merits. We further direct that no order shall be passed without affording reasonable opportunity of hearing to the parties. The assessee is directed to appear before the learned CIT(A) on all the hearing dates as may be fixed without any default. As the matter is being restored to the file of the learned CIT(A) for adjudication on merits, the other grievances raised by the assessee in the present appeal do not call for adjudication at this stage. Accordingly, grounds raised by the assessee are allowed for statistical purposes.

4. In the result, the appeal by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 17/10/2024

**Sd/-
AMARJIT SINGH
ACCOUNTANT MEMBER**

**Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER**

MUMBAI, DATED: 17/10/2024

Prabhat

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

By Order

Assistant Registrar
ITAT, Mumbai