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

BEFORE SHRI. ANIKESH BANERJEE, JUDICIAL MEMBER AND
SMT. RENU JAUHRI, ACCOUNTANT MEMBER

I.T.A No.4491/Mum/2024
(Assessment Year:2012-013

Visible Chits (Maharashtra) (P) Ltd, F/49,Eternity Mall, Teen Hath Naka, Thane, Maharashtra-400604 **PAN: -AADCV1633L**	**vs**	**Commissioner of Income-tax (Appeal),NFAC,** Aayakar Bhawan, Mumbai-400 020
APPELLANT		**RESPONDENT**

Assessee by	:	Mr. Raj Mehta
Respondent by	:	Shri Pravin Salunkhe SR DR
Date of hearing	:	26/11/2024
Date of pronouncement	:	27/11/2024

O R D E R

PER ANIKESH BANERJEE, J.M:

Instant appeal of the assessee was filed against the order of theLearned National Faceless Appeal Centre (NFAC), Delhi [for brevity, 'Ld.CIT(A)'] passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), for Assessment Year 2012-13,date of order04.12.2023. The impugned orderwas emanated from the order of the Ld. Income-tax Officer, Ward-15(3)(2), Mumbai (in brevity, 'the Ld.AO')passed under section 143(3)/ 147of the Act, date of order 28/12/2019.

2. The assessee has taken the following grounds: -

"1 The Appellant is a Company incorporated on 7th January 2010 and filed the Original Return Income for Assessment Year 2012-13 as on 30lh September 2012 showing NIL income. App« received Notice u/s 148 and in response to the notice u/s 148 revised ITR filed as on OB/12/ declaring Total income of Rs, 3,61,930.

2. The Appellant has taken unsecured loan from the Directors of the company and learned AO treating it as Income of the appellant and passed an order u/s 143(3) r.w.s!47 as on 28/12/ Against this Appellant filed an Appeal as on 23/01/2020 which got dismissed by Commissioner of Income Tax (Appeals).

3. The Learned Commissioner erred in law and in fact by passing the Order u/s 250 of the income Tax Act,1956.

4. The Learned Commissioner has erred in law and in fact by invoking section 68 by assuming Cash credits amounting INR 28.54,360/- into the bank account of the Appellant is belonging to and treated as Unexplained Cash Credits u/s 68 of the Income Tax Act, 1961 even though appellate has mentioned in the submission made to Commissioner of Income-tax in response to notice u/s 250 passed as on 03/10/2023 and response filed as on 08/10/2023 and 30/11/23subsequently, that the money deposited INR 28,53,360 into his Bank Account are Unsecured I received from the directors of the company,

5. The Learned Commissioner has erred in law and in fact by not taking cognizance of the details submitted by the appellant regarding the deposits amounting INR 28,54,360/- into his savings account which treated as Unexplained Cash Credits by the Commissioner and taxed u/s 61 made addition to the Income for the said period.

6. The Learned Commissioner has erred in law and in fact by not bothered to cross verify or commence scrutiny of the Directors who gave the loan to the Company just to save timeenergy as per Section 133(6) of the income Tax Act 1961 and assess the said income in appellant's hand.

7. The Learned Commissioner has erred in law and in fact by not giving the opportunity to be h after the submission made by the assessee as on 30 November 2023 and passed order as on 5th December without taking cognizance of the same.*

8. The Learned Assessing officer has erred in law and in fact is raising a demand of INR 17,32,590 u/s 156 of the Income-tax Act, 1961.

9. The Learned Assessment Unit has erredin law andin fact by levying interest u/s 234A, 234B, 234C charged for the defaults made by the appellant as per income Tax Computation form,

The appellant prays for leave to add to, amend, or modify the grounds of appeal."

3. When the appeal was called for hearing the ld. AR prayed for adjournment of appeal hearing. Considering the issue and ground of the appeal the ld. AR withdrew the adjournment application and proceeded for hearing.

4. The appeal was filed with a delay of 211 days. The Ld.AR explained the delay. The Ld.DR has not made any objection. So the delay of 211 days is condoned and the appeal is admitted for adjudication.

5. We heard the rival submissions and considered the documents available in the record. The assessment was completed with an addition of Rs.28,54,360/- for addition under section 68 related to unsecured loan due absence of creditworthiness of the loan creditors. The assessee filed an appeal before the ld. CIT(A) by challenging the assessment order. Before the ld. CIT(A) the assessee submitted all the relevant documents on different dates in its favour.

6. The ld. AR argued; however, the arguments were primarily focused on the Ground No. 7, pressed by the ld. AR, pertains to the denial of a reasonable opportunity, resulting in a failure to adhere to the principles of natural justice. Upon examination, we find that the ld. CIT(A) has issued on 20/11/2023 and assessee had complied with the said notice on 30/11/2023, but without considering the submission of the assessee, the impugned appeal order was passed on 04/12/2023. We find that the evidence submitted by the assessee was not considered in 1st appeal stage. Accordingly, we remand the matter to the file of the ld.CIT(A) for fresh adjudication *de novo*.

7. We observe that the genuineness of the transaction of the loan creditorswere already explained. Only the creditworthiness is in question before the revenue. The Ld.DR has not placed any strong objection to the submission made by the Ld.AR. We refrain from expressing any views on merits of the case to avoid prejudicing the re-adjudication. Both the parties have agreed to remand the matter to the file of the Ld.CIT(A). It is imperative that the Ld.CIT(A) provides the assessee with a fair and adequate opportunity of hearing during the set aside proceedings. Any evidence or explanation submitted by the assessee in its defense must be admitted and considered by the Ld.CIT(A) in accordance with law. Similarly, the assessee is expected to act diligently and co-operate fully during the appeal proceedings for quick disposal of the appeal.

8. Considering the above, the ground No.7 is adjudicated in favour of the assessee. The remaining grounds are only remained for academic purposes and do not require any adjudication.

9. In the result, the appeal of the assessee bearing **ITA No.4491/Mum/2024** is allowed for statistical purpose.

Order pronounced in the open court on 27th day of November 2024.

Sd/-	sd/-
(RENU JAUHRI)	(ANIKESH BANERJEE)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Mumbai,दिनांक/Dated: 27/11/2024
Pavanan

<u>Copy of the Order forwarded to</u>:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकरआयुक्त CIT
4. विभागीयप्रतिनिधि, आय.अपी.अधि., मुबंई/DR, ITAT, Mumbai
5. गार्डफाइल/Guard file.

BY ORDER,

//True Copy//

(Asstt. Registrar), **ITAT, Mumbai**