

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“PATNA BENCH, PATNA**  
**VIRTUAL HEARING AT KOLKATA**

**Before Shri Duvvuru RL Reddy, Vice-President and Shri Sanjay Awasthi, Accountant Member**

**I.T.A. No.237/Pat/2024**  
Assessment Year: 2011-12

**Ganesh Kumar Khemka.....Appellant**  
**B/46, Saraswati Apartment,**  
**S.P. Verma Road, Patna,**  
**Bihar – 800001.**  
**[PAN: AGWPK1726D]**

**vs.**

**ITO, Ward-4(3), Patna.....Respondent**

**Appearances by:**

Shri A. K. Rastogi, Sr. Advocate and Shri Rakesh Kumar, Advocate, appeared on behalf of the appellant.

Shri Ashok Kumar, CIT, appeared on behalf of the Respondent.

Date of concluding the hearing : November 26, 2024

Date of pronouncing the order : November 28, 2024

**ORDER**

**Per Sanjay Awasthi, Accountant Member:**

1. In this case, there is a delay of 59 days in the filing of this appeal for which the assessee filed a condonation petition averring as under:

*“The Ld. CIT(A), NFAC has passed order in Appeal No. CIT(A), Patna-2/10816/2014-15 dated 04/10/2023. There was no communication of uploading of this order either on the registered email or registered mobile no. of the petitioner. It is only recently that the jurisdictional A.O. i.e. DC/AC, Circle-4, Pantna has sent a notice of demand u/s 156 dated 10/01/2024 requiring the petitioner to pay the disputed tax of Rs.1.31 crore.*

*Pursuant thereto, the petitioner has checked the e-portal of A.Y.2011-12 and found the impugned order and accordingly, the petitioner is filing this appeal which can be said to be a belated appeal, if limitation is counted from the date of its order. However, it is stated that the impugned order came to the knowledge of the petitioner recently on 10/01/2014 and*

*therefore, according to the petitioner, the present appeal is not a belated appeal.*

*However, without entering into controversy, it is respectfully submitted that delay, if any, may kindly be condoned and the appeal may kindly be heard on merits.”*

1.1. Considering the reasons given in the said petition, we hereby condone the delay and admit this appeal for adjudication.

2. The present appeal emanates from an order u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act') dated 04.10.2023 of the National Faceless Appeal Centre [hereinafter referred to as 'CIT(A)'].

2.1 In this case, an addition of Rs.7,10,979/- has been made on account of interest on unsecured loan, on the finding that this interest has not been shown in the P & L A/c of the business concern but through another P & L A/c pertaining to one Shri G. K. Khemka. The Assessing Officer proceeded to apply section 36(1)(iii) of the Act and disallowed this amount. The second addition amounting to Rs.3,55,95,280/- has been made on account of addition to the capital account of partnership concerns (M/s Gajmukh Trading and M/s Bhawani Enterprises). It is recorded that the assessee could not explain these additions to the capital account and hence all these amounts have been added in a consolidated manner.

2.2 Before the ld. CIT(A), the assessee could not succeed as it has been recorded in paras 5 & 6 on pages 9 and 10 of the impugned order that considerable number of notices issued for compliance did not elicit any response from the side of the assessee. Accordingly, the ld. CIT(A) confirmed the order passed by the Assessing Officer.

2.3. Aggrieved with this order of the ld. CIT(A), the assessee has approached the ITAT through the following grounds of appeal:

- “1. For that the Ld. CIT(A) has erred in deciding appeal ex-parte and confirming the additions made by the A.O. amounting to Rs.3,63,06,259/- (Rs.7,10,979/- + Rs.3,55,95,280/-).
2. For that the Ld. CIT(A) has erred in holding that no written submission was filed in compliance to notice dated 20/12/2018 and other notices whereas the fact remains that a compliance was made in response to notice dated 20/12/2018 by filing a submission in Dak on 10/01/2019 and no information regarding other notices were received either on the email or on the registered mob. no.
3. For that the Ld. CIT(A) has erred in holding that no written submission was filed whereas the fact remains that he has reproduced the written submission dated 24/09/2015 at pages 3 to 9 of its order and has ignored the evidences/ documents consisting of 65 pages filed along with the said written submission.
4. For that the Ld. CIT(A) has erred in disposing of appeal during pendency of remand proceeding/ report as called for by the Ld. CIT(A) vide letter no.519 dated 29/09/2015 and reminders send subsequently.
5. For that the Ld. CIT(A) has erred in not providing proper and adequate opportunity of being heard and has also erred in not taking due cognizance of the written submission and the evidences/ documents submitted with the said submission.
6. For that the Ld. CIT(A) has erred in affirming the disallowance of interest amounting to Rs.7,10,979/- made by the A.O. u/s 36(1)(iii).
7. For that the Ld. CIT(A) has erred in affirming addition of Rs.3,55,95,280/- on account of addition to capital.
8. For that the disallowances/ additions made amounting to Rs.7,10,979/- and Rs.3,55,95,280/- are wrong, illegal and unjustified in the facts and circumstances of the appellant's case.
9. For that the appellant reserves its right to furnish detailed written submission along with documents and evidences on or before date of hearing.
10. For that the appellant may be given opportunity of personal hearing physically/virtually at the time of hearing of the appeal.
11. For that the whole order is bad in fact and law of the case and is fit to be modified and/or restored back of CIT(A) for decision a fresh after providing opportunity of personal hearing through physical/ virtual mode.
12. For that the other grounds, if any, shall be urged at the time of hearing of the appeal.”

3. Before us, the ld. AR vehemently argued that he was denied any meaningful opportunity to present his case and has drawn our attention to Ground Nos.1 & 2 in which the factum of denial of opportunity has been elaborately set out. It was also pointed out that a remand report was called for from the Assessing Officer but without waiting for the same, the ld. CIT(A) proceeded ahead to confirm the impugned additions. Therefore, he requested that the matter should be remanded back to the file of the ld. CIT(A) for fresh adjudication.

3.1 The ld. DR did not have any objection in case this matter is to be remanded back to the file of the ld. CIT(A).

4. Considering the totality of facts, it is felt that the assessee deserves a second chance to present the facts in support of his contentions before the first appellate authority. Accordingly, we remand this matter back to the file of the ld. CIT(A) for fresh adjudication after affording an opportunity of being heard to the assessee.

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

***Kolkata, the 28<sup>th</sup> November, 2024.***

Sd/-  
**[Duvvuru RL Reddy]**  
**Vice-President**

Sd/-  
**[Sanjay Awasthi]**  
**Accountant Member**

Dated: 28.11.2024.

RS

*Copy of the order forwarded to:*

1. Ganesh Kumar Khemka
2. ITO, Ward-4(3), Patna
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches