

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "B", MUMBAI**

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

**ITA No.4036/M/2024
Assessment Year: 2017-18**

M/s. Bhairavi Kaushik Kamdar, B/2201 Hiranandani Heritage, Poisar, S.V. Road, Kandivali (West), Maharashtra- 400 067 PAN: AAPPK6475L	Vs.	Income Tax Officer- 42(1)(1), Kautilya Bhavan, Bandra Kurla Complex, Maharashtra
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Dharan Gandhi, Ld. A.R.
Revenue by : Shri Preetam Kumar Turerao, Ld. Sr. A.R.

Date of Hearing : 14.11.2024
Date of Pronouncement : 26.11.2024

O R D E R

Per : Narender Kumar Choudhry, Judicial Member:

This appeal has been preferred by the Assessee against the order dated 06.08.2024, 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 30.05.2023 u/s 147 r.w.s. 144B of the Act has made the addition of Rs.3,73,00,734/- as unexplained credit u/s 68 of the Act.

3. The Assessee, being aggrieved, challenged the reopening of the case u/s 147/148 of the Act as well as addition on merits before the Ld. Commissioner, who though afforded 03 opportunities to the Assessee however, the Assessee except seeking adjournment on two occasions made no compliance. Therefore, in the constrained circumstances and in the absence of any written submissions/evidence, the Ld. Commissioner while following the judgment in the case of CIT vs. Multiplan India Pvt. Ltd. as reported 38 ITD 320 (Del) decided the appeal of the Assessee vide impugned order as ex-parte and consequently dismissed the same for non-prosecution.

4. The Assessee, being aggrieved, is in appeal before us and supported the grounds of appeal raised in appeal.

5. On the contrary, the Ld. D.R. refuted the claim of the Assessee.

6. We have heard the parties and perused the material available on record. The Ld. Advocate Shri Dharan Gandhi has claimed that reopening of the instant case by the AO is bad in law and therefore Assessment order itself is liable to be dismissed. We observe that this ground has not been raised before the Ld. Commissioner and even otherwise the Ld. Commissioner, in the absence of relevant evidence/submissions, which the Assessee has failed to file, dismissed the appeal of the Assessee in limine and without going into the merits of the case and therefore it would be appropriate to grant the liberty to the Assessee for raising all aspects/grounds concerning the issues involved before the Ld. Commissioner itself. Thus, considering the peculiar facts and circumstances of the case, for just decision of the case and substantial justice, we are inclined to set aside the impugned order and consequently remanding the instant case to the file of the Ld. Commissioner for decision afresh, suffice to say by affording reasonable opportunity of being heard to the Assessee as well as by considering the documents filed by the Assessee vide paper book dated 21.10.2024 before us on 08.10.2024. The Assessee is directed to file the copy of the same paper book before the Ld. Commissioner as well, who will consider the same for the just decision of the case. Liberty is granted to the Assessee to raise any issue on merit and legal angles including reopening of the instant case is bad in law as raised before us. We clarify that in case of subsequent default, the Assessee shall not be entitled for any leniency.

7. In the result, the appeal filed by the Assessee stands allowed for statistical purposes with liberty as mentioned in para 6 of this order.

Order pronounced in the open court on 26.11.2024.

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

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

* Kishore, Sr. P.S.

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

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.