

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

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER**

**ITA No.5173/M/2024  
Assessment Year: 2013-14**

<b>M/s. Aum Infratex Private Limited,</b> No.13/14, Old Patil Niwas, 2 <sup>nd</sup> Floor, 239/241, Walkeshwar Road, Malabar Hill, Maharashtra – 400 006 <b>PAN: AAACU8524C</b>	Vs.	<b>Assessing Officer 4.1.2,</b> Aayakar Bhavan, M.K. Road, Mumbai- 400020
(Appellant)		(Respondent)

**Present for:**

Assessee by : None  
Revenue by : Shri Srinivas P., Ld. Sr. A.R  
  
Date of Hearing : 26.11.2024  
Date of Pronouncement : 11.12.2024

**O R D E R**

**Per : Narender Kumar Choudhry, Judicial Member:**

This appeal has been preferred by the Assessee against the order dated 10.09.2024, impugned herein, passed by the National Faceless Appeal Centre/Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) u/s 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2013-14.

**2.** At the outset, it is observed that the notice sent to the Assessee at for the date of hearing on 26.11.2024 at the address mentioned in Form-36, is received back from the Postal Department with the remarks "left",

meaning thereby the Assessee is not situated at the address mentioned in Form No.36 and therefore this Court is inclined to decide this appeal as ex-parte.

**3.** At the outset, from the impugned order, it appears that there was delay of 1064 days in filing the first appeal before the Ld. Commissioner, however, the Assessee has not filed any reason for such delay in form No.35 and therefore the Ld. Commissioner declined to condone the delay and treated the appeal of the Assessee as time barred and dismissed accordingly, by considering the fact that sufficient reasons have not been provided by the Assessee for the unreasonable delay in exercising the statutory rights in seeking remedy. Unless and until it is demonstrated that there was sufficient cause that prevented the Assessee from exercising the legal remedy in filing the appeal within 30 days from the prescribed period the delay cannot be condoned.

**4.** The Ld. Commissioner also decided the appeal of the Assessee on merits by holding that addition made on the loan amount of Rs.44,00,000/- as made by the Assessing Officer (AO) vide assessment order dated 30.03.2016 u/s 143(3) is affirmed as the Assessee has failed to justify the transactions of Rs.44,00,000/- based on which the addition was made to its income during the assessment proceedings and during the course of appellate proceedings, the Assessee company failed to establish the sources and creditworthiness of the loan creditors and the genuineness of the transactions.

**5.** This Court has given thoughtful considerations to the peculiar facts and circumstances of the case and the decision arrived at by the Ld. Commissioner for not condoning the delay, wherefrom it clearly appears that the Assessee failed to file any reasons for the delay of 1064 days in Form No.35 as well as also failed to demonstrate any sufficient cause even during the appellate proceedings before the Ld. Commissioner and therefore the Ld. Commissioner was constrained to dismiss the appeal of the Assessee by treating the same as time barred. Even otherwise the Assessee before the Ld. Commissioner on merit as well, failed to justify the transactions by establishing the source, creditworthiness of the loan creditors and genuineness of the transactions, which resulted into affirmation of the addition of Rs.44 lakhs as made by the AO.

**5.1** Even during the proceedings before this Tribunal, inspite of sending notice for the date of hearing on 26.11.2024, the notice remained to be served on the reasons stated in para 2 of this order. Even otherwise the Assessee neither appeared nor filed any adjournment. Thus, on the aforesaid facts and circumstances the claim of the Assessee remained unsubstantiated. Even otherwise this Court could not find any reason/material to contradict the findings of the Ld. Commissioner. Hence, this Court is inclined to affirm the impugned order. Thus, the impugned order is affirmed by dismissing the appeal of the Assessee, however, with liberty to the Assessee to seek recall of this order, establishing the reason for non-service of the notice or non-appearance and non-substantiating the claim before the Ld. Commissioner.

**6.** In the result, the appeal filed by the Assessee stands dismissed with liberty as mentioned in para no.5.1 of this order.

**Order pronounced in the open court on 11.12.2024.**

**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.