

**IN THE INCOME TAX APPELLATE TRIBUNAL "F" BENCH MUMBAI**

**BEFORE MS. KAVITHA RAJAGOPAL, JUDICIAL MEMBER  
AND  
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No. 5300/MUM/2024  
Assessment Year: 2016-17**

Umed Singh Choudhary Flat No. 404, 4 <sup>th</sup> Floor, F2 Wing, Bldg-F, Residency Park Yazoo Park Chandansar Virar East Mumbai - 401303  (PAN : AAFPC3127P)	Vs.	Income Tax Officer Ward 33(3)(3), Kautaliya Bhavan, C-12, Bandra Kurla Complex, Bandra East, Mumbai, Maharashtra
<b>(Assessee)</b>		<b>(Respondent)</b>

**Present for:**

Assessee : Shri Abhay Agarwal, Advocate  
Revenue : Shri Ajay Singh, Sr DR

Date of Hearing : 06.02.2025  
Date of Pronouncement : 10.02.2025

**ORDER**

**PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), vide order no. ITBA/NFAC/S/250/2024-25/1068022807(1), dated 27.08.2024 passed against the assessment order by Income Tax Officer Ward 33(3)(3), Mumbai u/s. 143(3) of the Income-tax Act (hereinafter referred to as the "Act"), dated 29.12.2018 for Assessment Year 2016-17.

2. Grounds taken by the assessee are reproduced as under:

*1) The learned Assessing Officer Treated Rs.2,09,53,866/- of Sundry Creditors as unproved Sundry Creditors. The learned Assessing Officer added Rs. 2,09,53,866/- of Sundry Creditors in our Income from Business*

*2) Your petitioner craves leave to add, alter, amend and/or withdraw any/or all the above grounds of appeal.*

3. At the outset, from the perusal of order of Ld. CIT(A), we note that it has been passed ex-parte owing to non-prosecution. Ld. CIT(A) tabulated various notices issued for fixing date of hearing which remained unattended by the assessee. He noted that assessee did not file any written submission and has not responded to any of the notices. Hence constrained by non-earnestness and non-seriousness on the part of the assessee in prosecuting, Ld. CIT(A) dismissed the appeal as due to non-prosecution without dealing on the merits of the case.

3.1 On this observation Ld. Counsel of the assessee referred to paper book containing 116 page placed on record to evidently demonstrate that all the submissions were made including that during the course of physical hearings. Physical submissions is under acknowledgement from the office of Ld. CIT(A)-45, Mumbai, with date stamp of 17.09.2019. He further pointed out to letter furnished before Ld. CIT(A) with date stamp of 20.06.2019 whereby adjournment was sought by the authorised representative of the assessee. He also referred to submissions made on 12.09.2019 and 18.07.2019. According to him all these submissions have been ignored and not considered while dismissing the appeal for non-prosecution, more particularly when there is a dated acknowledged stamp on the submissions of 17.09.2019 which contains additional evidences as per rule 46A of the Income-tax Rules, 1962.

3.2 Ld. Counsel also referred to impugned assessment order to demonstrate that assessee had furnished the required details in the course of assessment proceedings, facts of which is noted by the Ld. AO. In the course of assessment, enquiries were made in respect of sundry creditors reported in the balance sheet as on 31.03.2016 amounting to Rs. 3,20,29,966/-. After considering the submissions made by the assessee, it is that out of the total said creditors, he accepted the amount of Rs. 1,10,76,100/- in respect of those creditors which were duly verified and found to be in order. For the remaining cases amounting to Rs. 2,09,53,866/-, he made the addition holding them as unproved sundry creditors under the head business income.

3.3 Case of the assessee is that since the matter has not been adjudicated on merits by Ld. CIT(A), ignoring various submissions already on record, it may be restored back to the file of Ld. CIT(A) for de novo adjudication.

4. We have heard both the parties and perused the material on record including the orders of the authorities below and paper book. In the given set of facts and circumstances, we find it appropriate to accept the prayer made by the Ld. Counsel and remit the matter back to the file of Ld. CIT(A) for de novo meritorious adjudication on the grounds raised by the assessee at the first appellate stage. Needless to say, assessee be given reasonable opportunity of being heard and to make any further submissions, if so desired. Assessee is also directed to be diligent in attending the hearing proceedings. Accordingly, grounds raised by the assessee are allowed for statistical purposes.

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

Order is pronounced in the open court on 10 February, 2025

Sd/-  
(Kavitha Rajagopal)  
Judicial Member

Sd/-  
(Girish Agrawal)  
Accountant Member

***Dated: 10 February, 2025***

*Poonam Mirashi,  
Stenographer*

**Copy to :**

1. The Assessee
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt.Registrar)  
ITAT, Mumbai