

आयकर अपीलीय अधिकरण "SMC" न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH, MUMBAI

श्री महावीर सिंह, उपाध्यक्ष के समक्ष ।
BEFORE SRI MAHAVIR SINGH, VICE PRESIDENT

आयकर अपील सं./ ITA No. 2606/Mum/2018
(निर्धारण वर्ष / Assessment Year 2009-10)

M/s Launch Pad 15-A, Ghatkopar Industrial Estate, LB.S. Marg, Ghatkopar (West), Mumbai-400 086	Vs.	The Income Tax Officer, Ward, 27(2)(3), Room No.417, 4 th Floor, Tower-6, Vashi, Navi Mumbai-400 703
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
स्थायी लेखा सं./PAN No. AACFL4789M		

अपीलार्थी की ओर से / Appellant by	:	Shri Harsh Batra, AR
प्रत्यर्थी की ओर से / Respondent by	:	Smt. Smita Verma, DR

सुनवाई की तारीख / Date of hearing:	27.09.2021
घोषणा की तारीख / Date of pronouncement :	27.09.2021

आदेश / ORDER

महावीर सिंह, उपाध्यक्ष के द्वारा /
PER MAHAVIR SINGH, VP:

This appeal of the assessee is arising out of order of the Commissioner of Income Tax (Appeals)-25, Mumbai [in short CIT(A)], in Appeal No. CIT(A)-25/IT0433/15-16 vide dated 02.02.2018. The Assessment was framed by the Income Tax Officer, Ward-27(2)(3) Mumbai (in short ITO/ AO) for the A.Y. 2009-10 vide order dated 09.03.2015 under section 143(3) of the Income-tax Act, 1961 (hereinafter 'the Act').

2. At the outset, it is noticed that the assessee has raised ground No.2 regarding violation of principle of natural justice in passing an ex parte order by CIT(A). The relevant ground No.2 read as under: -



“2. Passing of ex-parte order unjustified

(i) The Ld. CIT(A) erred in passing the order dated 02.02.2018 ex-parte without affording the appellant an appropriate opportunity of being heard. Thus, the appellate order dated 02.02.2018 is against the principles of natural justice. Hence, the same may be quashed and set aside.

(ii) The Ld. CIT(A) failed to appreciate that the Appellant had not received any notice from his office. Therefore, the Appellant is not aware of any date of hearing fixed by the Ld. Commissioner of Income Tax (Appeals). Hence the appellate order dated 02.02.2018 is passed without providing the sufficient opportunity of being heard to the Appellant. Therefore, the same may be quashed and set aside.”

3. I have also noticed that CIT(A) has not allowed opportunity of being heard to the assessee and passed an ex-parte order even the assessment is framed by Assessing Officer ex-parte under section 144 of the Act. The learned Sr. Departmental Representative Smt. Smita Verma stated that the assessee has filed written submission dated 11.01.2018.

4. I have heard both the rival contentions and perused the materials available on record including the order of the learned CIT(A). I find that the learned CIT(A) has dismissed appeal filed by the assessee ex-parte for non-prosecution, but failed to decide the issue on merit in respect of issues challenged in appeal. No doubt, it is the responsibility of the person who files appeal to go to the appellate authorities and file necessary evidences for speedy disposal of appeal. When the appellant did



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not appear before the authority as and when the appeal is called for hearing, the appellate authority is left with no option but to dispose off, appeal on the basis of materials available on record. However, such appeal should be decided on merits. In this case, on perusal the order passed by the learned CIT(A), I find that the CIT(A) has disposed off the appeal filed by the assessee without consideration of the issues on merits. Therefore, I am of the considered view that the appeal needs to be set aside to the file of the learned CIT(A) to decide the issue involved in appeal on merits. Hence, I set aside the appeal to the learned CIT(A) and direct him to reconsider the issue in accordance with law after affording adequate opportunity to the assessee. Needless to say, the assessee shall go before the learned CIT(A) and file necessary evidences to justify his case. In case, the assessee fails to appear before the learned CIT(A), then CIT(A) is free to take decision in accordance with law.

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

Order pronounced in the open court on 27.09.2021.

Sd/-
(महावीर सिंह / MAHAVIR SINGH)
(उपाध्यक्ष / VICE PRESIDENT)

मुंबई, दिनांक/ Mumbai, Dated: 27.09.2021

सुदीप सरकार, व. निजी सचिव / Sudip Sarkar, Sr.PS



आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai

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