

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ, B, मुंबई ।

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

श्री जोगिन्दर सिंह, न्यायिक सदस्य एवं
श्री अश्वनी तनेजा, लेखा सदस्य, के समक्ष

**Before Shri Joginder Singh, Judicial Member, and
Shri Ashwani Taneja, Accountant Member**

**ITA NO.2112/Mum/2012
Assessment Year: 2008-09**

Nirbhika Ramesh Parsani, 2 nd Floor, Broacha House, Garden Rd, off Colaba, Causeway Mumbai-400005	बनाम/ Vs.	ITO 12(2)(2) Aayakar Bhavan, M.K. Rd. Mumbai-
(Assessee)		(Revenue)
P.A. No.ABCPP4009K		

निर्धारिती की ओर से / Assessee by	Ms. Aarti Sathe (AR)
राजस्व की ओर से / Revenue by	Shri Maurya Pratap (DR)

सुनवाई की तारीख / Date of Hearing :	20/04/2016
आदेश की तारीख / Date of Order:	29/04/2016

आदेश / O R D E R

Per Ashwani Taneja (Accountant Member):

This appeal has been filed by the assessee against the order of Ld. Commissioner of Income Tax (Appeals), Mumbai-23 {{in short 'CIT(A)}}, dated 29.02.2012 passed against

assessment order u/s 143(3) dated 16.12.2010 for the Assessment Year 2008-09 on the following grounds:

"1.The Commissioner of Income-tax (Appeals) (hereinafter referred as "the CIT (A)") erred in rejecting the Appeal filed by the Appellant on a mere technical ground, by disregarding the fact that the defect in the appeal of non-production of power of Attorney was a curable defect under the provisions of the Income-tax act, 1961 (hereafter "the Act"). The impugned order is liable to be set aside on this ground alone.

2. The CIT (A) erred in not appreciating that the Power of Attorney in favour of the father of the Appellant authorizing him to attend proceedings on behalf of the Appellant was produced before the Assessing officer (A.O.) at the time of assessment. The impugned order has been passed on a complete non-application of mind and is liable to be set aside. It is submitted that the Power of Attorney was sufficient enough to show that the Appellant was personally unable to attend the hearing.

3.The CIT(A) erred in not appreciating that the Appellant has a very good case on merits and the additions made by the A.O. were uncalled for and not warranted in the facts of the case. It is submitted that the Appellant has made detailed submissions on the merits of the case before the A.O. and the additions are not justifiable.

The Appellant submits that the following additions :-

- | | |
|--|------------------------|
| <i>1) Interest Expenses Disallowed</i> | <i>Rs.3,8 1,579/ -</i> |
| <i>2) Addition in capital Account</i> | <i>Rs.2,62,659/-</i> |

are not justifiable in the facts of the present case. The CIT (A) by not affording an opportunity to the Appellant to make submissions on merits has passed the impugned order in violation of the principles of natural justice.

5.The Appellant craves leave to add, alter, amend, modify and /or cancel any of the above referred grounds of Appeal."

2. During the course of hearing, arguments were made by Ms. Aarti Sathe, Authorised Representative (AR) on behalf of the Assessee and by Shri Maurya Pratap, Departmental Representative (DR) on behalf of the Revenue.

3. During the course of hearing Ld. Counsel submitted that appeal was dismissed by the Ld. CIT(A) on the ground that appeal was signed by the Power of Attorney holder who was allegedly not competent to sign the appeal, and the Ld. CIT(A) without granting any opportunity dismissed the appeal as unadmitted merely, on the ground that Power of Attorney was not filed with the appeal. On the other hand, Ld. DR did not make any serious objections to the submissions made by the Ld. Counsel of the assessee.

3.1. We have gone through the order passed by the Ld. CIT(A), it is noted that appeal has been dismissed by him. Merely on the ground that appeal was signed by the Power of Attorney holder and not by the assessee herself, and since Power of Attorney was not filed with the appeal and assessee did not file any evidences to show that she was absent from India during the relevant time, the appeal was dismissed by the Ld. CIT(A).

3.2. In our considered view, the approach of the Ld. CIT(A) has been highly unreasonable and unfair. Absence of signatures by the competent person is a curable defect. The appeal memo (in Form No.35) was admittedly signed by someone, other than the assessee, in the capacity as power of attorney holder. If the

Ld. CIT(A) observed that the said person was not competent to sign the appeal memo, then, it was accepted from him to at least give an opportunity to the assessee to cure the defect getting it signed either from the assessee herself or by provide the power of attorney and other requisite details and documentary evidences so as to make compliance of law in the most appropriate manner. The requirement of the law of putting signature by the competent person upon the appeal memo is undoubtedly a mandatory requirement. But at the end of the day, it remains merely a procedure requirement and it does not lay down the substantive law. In other words, tax liability cannot be finally determined and fastened upon the assessee merely, on the ground that at the time of filing of the appeal, the appeal memo was not signed by the person who was not competent to sign under the law as per the views of the Ld. CIT(A). If such an approach is follow while deciding the appeal by the appellate authorities as has been followed while passing the impugned order, then faith of tax payer upon the judicial system of our country shall definitely fade away. It has led to misuse of the government machinery and also caused hardship to the taxpayer. In our humble opinion, such kind of unreasonable and harsh approach must be avoided.

3.3. Keeping in view all the facts and circumstances of the case we send this appeal back to the file of the Ld. CIT(A) with the directions to give adequate opportunity of hearing to the assessee to remove the aforesaid defect or any other defect of

similar nature that may come to the notice of the Ld CIT(A) and this appeal should be decided on merits of the issues after giving adequate opportunity of hearing to the assessee. The assessee is free to take of all legal and factual issues before the Ld. CIT(A). The assessee shall also extent requisite cooperation to Ld. CIT(A) by providing requisite details and documentary evidences as may be required by the Ld. CIT(A) time to time, as per law. Thus, this appeal may be treated as allowed for statistical purposes.

4. In the result, this appeal filed by the assessee may be treated as allowed for statistical purposes.

Order pronounced in the open court on 29th April, 2016.

Sd/-

(Joginder Singh)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-

(Ashwani Taneja)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated 29/04/2016

Patel, P.S./नि.स.

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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