

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ "डी" मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, MUMBAI
BEFORE SHRI MAHAVIR SINGH, JM AND SHRI RAJESH KUMAR, AM

आयकर अपील सं./I.T.A. No.6011/Mum/2014
(निर्धारण वर्ष / Assessment Years : 2009-10)

Mr.Rupesh P Mehta, 5, Kamlanand Society, M G Road, Mulund (W), Mumbai-400080	बनाम/ Vs.	Asst. Commissioner of Income Tax, Circle 23(3), C-10. 4 th floor, Prathashakar Bhavan, Bandra Kurla Complex, Bandra (E), Mumbai-400051
--	---------------------	---

स्थायी लेखा सं./ PAN :AGHPM3035C

अपीलार्थी की ओर से / Assessee by	Shri Malay Shah
प्रत्यर्थी की ओर से/Revenue by	Shri B S Bist

सुनवाई की तारीख / **Date of Hearing** : **25.10.2016**
घोषणा की तारीख / **Date of Pronouncement** : **25.10.2016**

आदेश / ORDER

PER RAJESH KUMAR, AM

This is an appeal filed by the assessee challenging the order dated 27.6.2014 passed by the Id.CIT(A)-7, Mumbai restoring the matter to the file for fresh assessment. The appeal pertains to the assessment year 2009-10.

2. The issue raised by the assessee in this appeal in ground no.1 is against restoring the matter to the file of the AO by CIT(A) for making fresh assessment after necessary verification which was in violation of the provisions of section

251 of the Income Tax Act, 1961 as the restoration is not permitted the Act. The Id.AR submitted before us that the Id. CIT(A) has grossly erred in violation of provision of section 251 of the Act by setting aside the assessment order and restoring the same to the file of the AO for fresh assessment after necessary verification. Therefore the Id.AR argued before us that order of Id. CIT(A) be set aside and Id CIT(A) be directed to adjudicate the matter on the facts and as per law.

3. Ld. DR has very fairly agreed with the submissions of the Id.AR.

4. After considering the facts before us, we find that the Id. CIT(A) restored the matter back to the file of the AO to decide the issue and make assessment afresh meaning thereby that the matter has been set aside which is not permissible in law in terms of the provisions of section 251 of the Act. For the sake of clarity we reproduce relevant extract of the CIT(A) order as under :

"Reasons for the decision

5. I have carefully considered the matter. The AO is directed to verify the following:

(i) The claim of the appellant that FBT of Rs.10,25,000/- was first shown as income by adding it to salary income and then it was allowed as perquisite.

[ii] The details of occupancy / allotment/ completion of the property with regard to the claim of deduction of Rs.4,93,208/ - made u/ s. 24(b) of the Act.

The appellant would produce before the AO the required details on the above. After due verification the AO would take remedial measures, if any, as per the provisions of the Act."

5. After hearing the Id.AR, we are in agreement with the Id. AR that the Id. CIT(A) has wrongly set aside the matter of the file of the AO which is not permissible under the Act and we are, therefore, inclined to set aside the order of CIT(A) and restore the matter back to the file of Id.CIT(A) to decide the appeal on the facts and as per law.

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

Order pronounced in the open court on 25.10.2016.

Sd
(MAHAVIR SINGH)
Judicial Member

sd
(RAJESH KUMAR)
Accountant Member

मुंबई Mumbai; दिनांक Dated :25.10.2016

Sr.PS:SRL:

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 – concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

True copy

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