

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

**BEFORE SHRI G.S. PANNU, ACCOUNTANT MEMBER AND  
SHRI AMARJIT SINGH, JUDICIAL MEMBER**

**ITA NO. 5123/MUM/2015 : (A.Y : 2012-13)**

Conald Joseph Baptist  
Uxmal Marine Services,  
301/304, Vyapar Bhavan,  
P.D. Mello Road, Carnac Bunder,  
Mumbai 400 009 (Appellant)  
**PAN : AACPB5581B**

Vs. DCIT, Circle-6(3)(1),  
Mumbai (Respondent)

**Assessee by : Shri Subhash S. Shetty**

**Revenue by : Shri Deepak Ripote**

**Date of Hearing : 20/07/2016**

**Date of Pronouncement : 12/08/2016**

**ORDER**

**PER G.S. PANNU, AM :**

The captioned appeal by the assessee is directed against the order of CIT(A)-12, Mumbai dated 30.09.2015, pertaining to the Assessment Year 2012-13, which in turn has arisen from the order passed by the Assessing Officer dated 23.02.2015 under section 143(3) of the Income Tax Act, 1961 (in short 'the Act').

2. In this appeal, the first and the foremost plea of the assessee is that the CIT(A) erred in disposing the appeal of the assessee *ex parte* without deciding on merits of the grounds raised before him.

3. In brief, the relevant facts are that assessee is an individual whose return of income for Assessment Year 2012-13 was subject to scrutiny assessment whereby the total income was assessed at Rs.89,90,530/- as against the returned income of Rs.47,26,570/-. In the scrutiny assessment, additions were made to the returned income on account of disallowance u/s 43B– Rs.8,12,611/- and on account of fictitious creditors u/s 41(1) – Rs.34,51,342/-. Both the additions were challenged in appeal before the CIT(A). CIT(A) has dismissed the appeal without going into the merits of the case as according to him assessee was not interested in pursuing the appeal. As per CIT(A) nobody appeared on behalf of the assessee inspite of issuing of notice of hearing.

4. Before us, the plea of the assessee is that the notice of hearing could not be complied with due to certain inadvertent error and, in any case, it is pointed out that the CIT(A) has unjustly dismissed the appeal without deciding on merits the grounds raised before him. It was submitted that the appellant would be satisfied if the appeal is restored back to the file of CIT(A) to be adjudicated afresh in accordance with law.

5. On the other hand, the Ld. DR for the Revenue has not controverted the factual matrix brought out by the learned representative for the assessee and has also not opposed the plea for remanding the matter back to the file of the CIT(A).

6. We have carefully considered the rival submissions. Quite clearly, in the present case the appeal of the assessee has been dismissed by the Commissioner (Appeals) without going into the merits of the issues raised before him. Sec. 250(6) of the Act prescribes that the order of the Commissioner (Appeals) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for such a decision. Ostensibly, the CIT(A) is obligated to dispose of the appeal in the manner prescribed in Sec. 250(6) of the Act, which requires that the issues raised before him by way of the Grounds of appeal are addressed, decision rendered thereon by stating the reasons for such a decision. The said approach is conspicuous by its absence in the impugned order of the CIT(A), wherein the appeal has been dismissed *in limine* without adverting to the merits of the Grounds of appeal raised before him. Therefore, on this count itself, the impugned order of CIT(A) is unsustainable. Be that as it may, we deem it fit and proper to set-aside the impugned order of CIT(A) and remand the appeal back to his file for adjudication afresh as per law after allowing the assessee a reasonable opportunity of being heard.

7. In the result, appeal of the assessee is allowed, as above.

Order pronounced in the open court on 12<sup>th</sup> August, 2016.

Sd/-

**(AMARJIT SINGH)**  
**JUDICIAL MEMBER**

Mumbai, Date : 12<sup>th</sup> August, 2016

\*SSL\*

Sd/-

**(G.S. PANNU)**  
**ACCOUNTANT MEMBER**

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "I" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar  
I.T.A.T, Mumbai