

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC", BENCH MUMBAI
BEFORE SHRI R.C.SHARMA, AM
ITA No.5291/Mum/2016
(Assessment Year :2010-11)

| | | |
|--|-----|--|
| M/s. Magma Industries 804, Shree Madhuban CHS Ltd., 51 st Road, TPS-3, Borivali (W), Mumbai – 400 092 | Vs. | ITO – 25 (2)(2) Now. ITO 32(2)(3), Mumbai – 400 051 |
| PAN/GIR No. | | AAGFM4655F |
| Appellant) | .. | Respondent) |

| | |
|------------------------------|-------------------|
| Assessee by | Shri S.C.Patni |
| Revenue by | Shri A.K.Kardam |
| Date of Hearing | 09/05/2017 |
| Date of Pronouncement | 09/05/2017 |
| | |

आदेश / O R D E R

PER R.C.SHARMA (A.M):

This is an appeal filed by the assessee against the *ex-parte* order of CIT(A)-44, Mumbai dated 21/06/2016 for the A.Y.2010-11 in the matter of order passed u/s.2010-11.

2. It was argued by learned AR that the learned Commissioner of Income Tax, Appeals - 44, Mumbai erred in passing the *ex-parte* order by holding that assessee has not attended the hearings before him which is absolutely incorrect as there are enough documentary evidences available with the assessee and also as per order sheet entries before the learned CIT(A), that the assessee has attended hearings on 24/05/2016 and on 10/06/2016 but as the learned CIT(A) was busy, the case was

adjourned to 17/06/2016 and the notice of first hearing on 21/04/2016 was received on same day.

3. Learned AR has drawn our attention to the adjournment petition filed before the CIT(A) on 10/06/2016 requesting that since he was suffering from high fever, adjournment should be granted. However, the CIT(A) did not agree for any adjournment and passed *ex-parte* order.

4. On the other hand, learned DR supported the order of the lower authorities.

5. I have considered rival contentions and found from record that the learned Commissioner of Income Tax, Appeals - 44, Mumbai has passed the order *ex-parte* despite the fact that the notice of first hearing was received on the date of hearing itself i.e. 21/04/2016 so the hearing was adjourned to 24/05/2016. On 24/05/2016, the learned CIT(A) was busy and the hearing was adjourned from his end to 10/06/2016. On 10/06/2016, the assessee's AR was suffering from high fever. A letter stating this fact was filed on 10/06/2016 and hearing was adjourned to 17/06/2016. The assessee's AR could not recover from his high fever before 17/06/2016 and therefore could not attend the hearing on 17/06/2016. After getting well, the AR attended the office of learned CIT (A) on 20/06/2016 but he was informed that the order has been passed *ex-parte*. The said *ex-parte* order is bad in law as the circumstances in which the non attendance resulted were beyond the control of the assessee.

6. I found that an adjournment was sought by the AR of the assessee on 10/06/2016. I also found that the learned CIT (Appeals) has not adjudicated on the grounds of appeal raised before him and simply passed the ex-parte order for the reason of non attendance. The non-attendance by the assessee was only on one occasion i.e. 17/06/2016 as the AR had not recovered from high fever.

7. In the substantial interest of justice, I set aside the *ex-parte* order passed by the CIT(A) and restore the matter back to the file of the CIT(A) for deciding afresh after giving due opportunity to the assessee. I also direct the assessee to appear before CIT(A) within 60 days from the receipt of this order. In case of any failure by assessee, CIT(A) is empowered to pass order after considering material placed on record. I direct accordingly.

8. In the result, appeal of the assessee is allowed in part for statistical purposes.

Order pronounced in the open court on this 09/05/2017

Sd/-
(R.C.SHARMA)
ACCOUNTANT MEMBER

Mumbai; Dated 15/05/2017

Karuna Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai