

**IN THE INCOME TAX APPELLATE TRIBUNAL “E” BENCH, MUMBAI**  
**BEFORE SRI MAHAVIR SINGH, JM AND ASHWANI TANEJA, AM**  
**ITA No.7399/Mum/2013**  
**(A.Y:2005-06)**

<b>Smt. Subhadra Atmaram Mokashe</b> Flat No.6/2B Dhanraj Compex Near Ashok Teatre Pimpri Pune-411017	Vs.	<b>Dy. Commissioner of Income Tax</b> Central Circle 39, Mumbai
<b>PAN NO. ATSPM1044K</b>		
<b>Appellant</b>	..	<b>Respondent</b>
<b>Assessee by</b>	..	<b>None</b>
<b>Revenue by</b>	..	<b>Shri D. Chanda, CIT DR</b>
<b>Date of hearing</b>	..	<b>30-11-2016</b>
<b>Date of pronouncement</b>	..	<b>30-11-2016</b>

**ORDER**

**PER MAHAVIR SINGH, JM:**

This appeal by the assessee is arising out of the order of CIT (A)-36, Mumbai in appeal No. CIT(A)-36/IT-265/11-12 dated 27-09-2013. The Assessment was framed by DCIT Central Circle-39, Mumbai for the A.Y. 2006-06 vide order dated 29-12-2010 u/s 143(3) r. w. s. 153C of the Income Tax Act, 1961 (hereinafter ‘the Act’).

2. At the outset it is noticed that the first ground of appeal of assessee is as regards to the order of CIT(A) passing ex-parte order and non-speaking order. The CIT(A) order is also not on merits. The assessee has raised following two grounds: -

*“1. In the facts and circumstances of the case and in law the learned CIT(A) has erred in passing the expert order on the alleged ground of non-cooperation on the part of the appellant. All the observations/ findings/ conclusions drawn by the learned CIT(A) in this regard being false and contrary to the records the same may please be deleted and consequently the impugned order passed by the learned CIT(A) may please be set aside and the matter may please be restored to the file of the learned CIT(A) for deciding the same afresh.*

*2. The learned CIT(A) ought to have considered the voluminous written submissions filed before him by the appellant during the appellate proceedings and ought to have decided the appeal on merits. The impugned appellate order passed by the learned CIT(A) being bad in law and without jurisdiction the same may please be vacated.”*

3. We have gone through the orders of CIT(A) and noted that the CIT(A) vide Para 5 of his appellate order noted as under: -

“5. From the above conduct of the appellant, it is clear that the appellant is approaching the appeal in very casual manner and is not interested in perusing the same. In spite of being given repeated opportunities covering a span of nearly 2 years starting from October, 2011 to September, 2013 the appellant has failed to appear. This shows that the appellant is absolutely indifferent and casual to appellate proceedings.”

Further, the CIT(A) dismiss the appeal in default without going on merits by observing in Para 7 and 7.1 as under: -

“7. Even on merits the appeal deserves to be dismissed.

7.1 The appellant has not cooperated during the assessment proceedings and neither in the appellate proceedings here. The AO in his 11-page assessment order has very clearly brought out all the facts, given a show cause and then assessed the total income at Rs.10,66,708/-.

Therefore, the order of the AO is confirmed on the total income assessed at Rs.10,66,708/-.

Therefore, the appeal is liable to be dismissed.”

4. From the above it is clear that the order of CIT(A)'s order is not on merits and dismissed for default of the assessee. We are of the view that the CIT(A) is a quasi judicial authority under the Income Tax Act and the Act does not authorize a quasi judicial authority to dismiss the appeal for default by inevitable implication but the appellate authority has to decide the appeal on merits and not to dismiss it for default. The appellate authority has no jurisdiction to dismiss appeal for default but bound to decide the appeal on merits even in the absence of assessee. Accordingly, we set aside the order of CIT(A) and remand the matter back to him for deciding afresh after allowing opportunity of being heard to the assessee. In case the assessee does not appear he can decide on merits but after allowing reasonable opportunity. This appeal of assessee is allowed for statistical purpose.

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

Order pronounced in the open court on 30-11-2016.

Sd/-  
(ASHWANI TANEJA)  
ACCOUNTANT MEMBER

Sd/-  
(MAHAVIR SINGH)  
JUDICIAL MEMBER

Mumbai, Dated: 30-11-2016

*Sudip Sarkar /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.

//True Copy//

BY ORDER,

Assistant Registrar  
**ITAT, MUMBAI**