

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'SMC', मुंबई ।
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "SMC", MUMBAI
Before Shri Shamim Yahya, Accountant Member

ITA No.2729/Mum/2017 : Asst.Year 2011-2012

Shri Ramniwas Nathmal Phalod B/703, Saisankar CHS Limited Son Trombay Road, Deonar Govandi, Mumbai – 400 088 PAN : AFEP7922B.	बनाम/ Vs.	Dy.Commissioner of Income-tax Circle 6(3) Mumbai.
(अपीलार्थी /Appellant)		(प्रत्यर्थी/Respondent)

Appellant by : Shri Ashish Kumar
Respondent by : Ms.Hemalatha

सुनवाई की तारीख / Date of Hearing : 29.08.2017	घोषणा की तारीख / Date of Pronouncement : 03.10.2017
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आदेश / ORDER

This appeal by the assessee is directed against order of learned CIT(A) dated 17.02.2014 and pertains to assessment year 2011-2012.

2. The grounds of appeal read as under:-

“1. The Learned Commissioner of Income Tax (Appeals)-13 ["CIT(A)"], on the facts of the case and in law, has erred in upholding the disallowance made on account of foreign travel expenses amounting to Rs. 3,60,469/-.

2. The Learned Commissioner of Income Tax (Appeals)-13 ["CIT(A)"], on the facts of the case and in law, has erred in upholding the disallowance made under section 14A amounting to Rs, 31,952/-.

3. The Learned Commissioner of Income Tax (Appeals)-13 ["CIT(A)"], on the facts of the case and in law, has erred in

upholding the addition of Rs. 10,00,000/- on account of estimated scrap sale.

4. *The Appellant crave leaves to add, amend, alter, modify and or withdraw any of the above grounds of appeal, which are without prejudice to one another.*

The appellant prays this Hon'ble Tribunal to delete the additions made by the A.O. and confirmed by the learned CIT (A) by passing an ex-parte order without giving a reasonable opportunity of being heard.”

3. In this case, in the assessment order the Assessing Officer made an addition of Rs.13,92,421 as under:-

Foreign Travelling Expenses	Rs. 3,60,469
Disallowance u/s 14A	Rs. 31,952
Sale of Scrape	Rs.10,00,000

Total	Rs.13,92,421
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4. Against the above order, assessee appealed before the learned CIT(A). Learned CIT(A) noted that there was no representative by the assessee. He proceeded to confirm the order of the Assessing Officer. The order of learned CIT(A) regarding non-availability of assessee may be gainfully referred as under:-

“Non-availability of the appellant - This appeal was posted for hearing on 25th November 2016 vide notice dated 7th November 2016. It was however returned back by the postal authorities with the remark 'left', A letter was then issued to the AO on 25th November 2016 enclosing a notice dated 23rd November 2016 whereby the appeal had been fixed for hearing on 13th December 2016. The AO was requested to get the fresh

notice served and return the acknowledgment to this office and also intimate the current address of the appellant. He was requested to ensure service, if required by affixture. He was also intimated that the appeal shall be disposed of on merits in case of non-service of the said notice. There has been neither any reply from the AO nor any attendance on part of the appellant. It is hence clear that no useful purpose would be served by keeping this appeal pending, It is accordingly taken up ex parte and on merits.”

5. Thereafter learned CIT(A) narrated the A.O's case and confirmed the addition.

6. Against the above order, assessee is in appeal before the ITAT. Learned Counsel of the assessee submitted that proper notice for hearing has not been received from the learned CIT(A). He submitted that one notice was received from the CIT(A). But the same also included a copy of dispute resolution scheme. Hence assessee was under the impression that the said notice was only an information for the dispute resolution scheme. Learned Counsel for the assessee submitted that as evident from the aforesaid order, learned CIT(A) had directed the A.O. to serve notice upon the assessee. But there is clear mention by the learned CIT(A) that the Assessing Officer has not responded. Hence learned Counsel pleaded that there has been lack of proper opportunity to the assessee to canvass the appeal before the learned CIT(A). Hence learned Counsel pleaded that an opportunity may be given to the assessee to properly canvas the appeal before the learned CIT(A).

7. I have carefully considered the submissions and perused the records. I find considerable cogency in the submissions of the learned CIT(A). Learned CIT(A) is directed to consider the issue afresh after giving the assessee

proper opportunity of being heard. Learned Counsel of the assessee has also undertaken to suo moto appear before the learned CIT(A) within two months of this order to canvas the appeal.

8. In the result, this appeal filed by the assessee stands allowed for statistical purposes.

Order pronounced on this 03rd day of October, 2017.

Sd/-
(Shamim Yahya)
ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 03rd October, 2017.
Devdas*

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