

**IN THE INCOME TAX APPELLATE TRIBUNAL “H”
BENCH, MUMBAI**

**BEFORE SHRI R. C. SHARMA, AM &
SHRI SANDEEP GOSAIN, JM**

आयकरअपीलसं./ I.T.A. No. 7121/Mum/2016
(निर्धारणवर्ष / Assessment Year: 2009-10)

Haritara Construction Co. Office No. 101, Mhatre Royale Co Op. Hsg. Society Ltd, L.T. Road, Dahisar(w) Mumbai-400068	बनाम/ Vs.	ITO-26(2)(2) C-12, BandraKurla Complex, Bandra (west) Mumbai – 400054.
स्थायीलेखासं ./जीआइआरसं ./PAN/GIR No. AAEFH1406M		
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Ms. DinkleHaria, AR
प्रत्यर्थीकीओरसे/Respondentby	:	Shri M. C. Omi Ningshen, DR

सुनवाईकीतारीख/ Date of Hearing	:	19/04/2018
घोषणाकीतारीख / Date of Pronouncement	:	26/04/2018

आदेश / ORDER

Per Sandeep Gosain, Judicial Member:

The present Appeal filed by the assesseeis against the order of Commissioner of Income Tax (Appeals)-44, Mumbai, dated 21.09.16 for AY 2009-10.

2. At the very outset, Ld. AR appearing on behalf of the assessee submitted that Ld. CIT(A) had erred in law as well as on the facts in dismissing the appeal ex-parte u/s 250(6) of the Act which is arbitrary & unjustified.

3. We have heard the counsels for both the parties and we have also gone through the orders passed by revenue authorities as well as material placed on record. We find that para no. 3 of the order of Ld. CIT(A), categorically mentioned the chart depicting the date of issue of notice, date fixed for hearing and also the remarks with regard to the non-compliance on the part of the assessee.

Apparently, from the records, there are no errors in the orders passed by Ld. CIT(A) in providing opportunity to the assessee. We are also of the view that it was the bounded duty of the assessee or his counsel to appear before the Ld. CIT(A) in compliance of the notices issued to the assessee. The assessee had not acted with due diligence and no plausible reasoning have been shown for non-compliance of directions passed by Ld.

CIT(A) and for not participating before the first appellate authority.

Nevertheless the principles of natural justice demands that the lis between the parties should be decided on merits after providing due opportunity of hearing to both the parties. Although in the present case adequate opportunity of hearing to both the parties was given but still the assessee has not appeared and participated before the first appellate authority and has now raised a plea that sufficient and reasonable opportunity was not provided to the assessee.

4. Be that as it may, considering the facts and circumstances of the present case, we are of the considered view that the ends of justice would be met only when we allow one more opportunity of hearing to the assessee for contesting the appeal on merits before Ld. CIT(A).

In our view, if a further opportunity to the assessee for contesting his case before Ld. CIT(A) is allowed, no prejudice

would be caused to the interest of revenue as legitimate taxes due on the assessee's correct income will be collected. Whereas, if the contrary view is taken, then in that eventuality the assessee may be put to great hardship and difficulty. Therefore, keeping in view the above discussion and without commenting anything on the merits of the other grounds raised by the assessee, we are of the considered view that the interest of justice would be met in setting aside the ex-parte order passed by Ld. CIT(A) and remitting the matter back to the file of Ld. CIT(A) for providing further opportunity to the assessee to contest its claim on merits.

Before parting, we may make it clear that our decision to restore the matter back to the file of Ld. CIT(A) shall in no way be construed as having any reflection or expression on the merits of the issues, which shall be adjudicated by the Ld. CIT(A) independently in accordance with law. With these directions, this ground raised by the assessee is **allowed for statistical purposes.**

5. Since, we decided the main ground of appeal and restore the matter back to the file of Ld. CIT(A) for providing further opportunity to the assessee, therefore the other grounds of appeal become academic.

6. In the net result, the appeal filed by the assessee stands **allowed for statistical purposes.**

Order pronounced in the open court on 26th April, 2018.

<i>Sd/-</i> (R.C. Sharma) लेखासदस्य / Accountant Member मुंबई Mumbai; दिनांक Dated : <i>Sr.PS. Dhananjay</i>	<i>Sd/-</i> (Sandeep Gosain) न्यायिकसदस्य / Judicial Member 26.04.2018
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आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

**उप/सहायकपंजीकार
(Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai**