

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

**BEFORE SHRI SAKTIJIT DEY, HON'BLE JUDICIAL MEMBER &
SHRI Dr. A.L. SAINI, HON'BLE ACCOUNTANT MEMBER**

**ITA No. 236/MUM/2017
(Asst. Year : 2011-12)**

Moiz Saifuddin Rajkotwala, vs. DCIT, Range-20(2),
Flat No.10, 2nd Floor, Mumbai.
South Wing, Madhav Nagar,
Above Merwans Cake Shop,
S.V. Road, Andheri West,
Mumbai.

PAN No. AADPR 8982 M
(Appellant)

(Respondent)

Assessee by : None.

Department By : Shri Saurabhkumar Rai – DR

Date of hearing : 18/06/2018.

Date of pronouncement : 22/06/2018.

ORDER

PER Dr. A.L. SAINI, ACCOUNTANT MEMBER

The captioned appeal filed by the assessee pertaining to Assessment Year 2011-12, is directed against the order passed by the Id. CIT(A)-36, Mumbai in appeal No. CIT(A)-31/IT-90/DCIT-20(2)/14-15, dated 21/10/2016, which in turn arises out of the assessment order passed by the Assessing Officer under section 143(3) of the Income Tax Act, 1961 (for short, "Act"), dated 28/03/2014.

2. The grievances raised by the assessee are as follows:-

- "1. *Learned Commissioner of Income Tax (Appeals) erred in passing an Order without affording a reasonable opportunity of being heard to the Appellant.*
Appellant submits that in view of the facts and circumstances of the case as well as in law said Order passed is bad in law and deserves to be quashed.
2. *Learned Commissioner of Income Tax (Appeals) erred in confirming the order of Learned Assessing Officer in disallowing a sum of Rs. 1,96,514/- under Section 23(1)(a) of the Act.*
Appellant submits that in view of the facts and circumstances of the case as well as in law said disallowance u/s 23(1)(a) of the Act is bad in law and deserves to be deleted.
3. *Learned Commissioner of Income Tax (Appeals) erred in confirming the order of Learned Assessing Officer in disallowing a sum of Rs. 2,86,438/- under Section 14A of the Act.*
Appellant submits that in view of the facts and circumstances of the case as well as in law said disallowance u/s 14A of the Act is bad in law and deserves to be deleted.
Appellant prays for appropriate relief.
Appellant craves leave to add, alter, amend or withdraw any of the above grounds of Appeal."

3. At the time of hearing, none appeared on behalf of the assessee in spite of issuance of notices for hearing on the address given by the assessee in Form No. 36 (column No.10), and the Id.Departmental Representative is present for the respondent-revenue. In absence of appearance of the assessee, the appeal is being disposed of *ex parte* qua the assessee after hearing the Id.Departmental Representative on merits in terms of Rule 26 of the Income Tax (Appellate Tribunal) Rules, 1963.

4. We note that the impugned order passed by the Id. CIT(A) is an *ex parte* order and the assessee could not plead his case during the appellate proceedings. During the course of appellate proceedings, notices for hearing were issued to the assessee, the details of which are as follows:-

Date of issue of notice	Date of hearing	Remarks
27/06/2016	01/08/2016	Notice returned with the remarks 'unclaimed'.
02/08/2016	31/08/2016	Request for adjournment submitted on 31/08/2016. Accordingly, adjourned to 21/09/2016.
---	21/09/2016	None attended
19/09/2016	19/10/2016	Notice returned by the postal authorities

It is clear from the date of hearings noted above that the assessee has participated in appellate proceedings. We also note that grounds Nos. 1 & 2 raised by the assessee relate to the grievance of the assessee that he has not been given reasonable opportunity of being heard, therefore, it is against the principles of natural justice. At the cost of repetition, ground No.1 raised by the assessee is given below for ready reference:-

- "1. *Learned Commissioner of Income Tax (Appeals) erred in passing an Order without affording a reasonable opportunity of being heard to the Appellant. Appellant submits that in view of the facts and circumstances of the case as well as in law said Order*

passed is bad in law and deserves to be quashed."

5. A perusal of the body of the impugned order passed by the Id. CIT(A) shows that it is an ex parte order, which has been challenged by the assessee for want of proper opportunity. Therefore, we are of the view that one more opportunity should be given to the assessee to plead his case before the Id. CIT(A). Under these facts and circumstances of the case, we deem it fit and proper to set aside the order passed by the Id.CIT(A) and remand the matter back to the file of the Id.CIT(A) for consideration on merits after affording opportunity of being heard to the assessee. Thus, this appeal filed by the assessee is allowed for statistical purposes.

6. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order Pronounced in open Court on this 22nd day of June, 2018.

Sd/-
(SAKTIJIT DEY)
Judicial Member

sd/-
(A.L. SAINI)
Accountant Member

Dated : 22nd June, 2018.

vr/-

Copy to:

1. *The Assessee - Moiz Saifuddin Rajkotwala, Flat No.10, 2nd Floor, South Wing, Madhav Nagar, Above Merwans Cake Shop, S.V. Road, Andheri West, Mumbai.*
2. *The Revenue - DCIT, Range-20(2), Mumbai.*
3. *The Pr.CIT-24, Mumbai.*
4. *The CIT(A)-36, Mumbai.*
5. *The D.R., Mumbai.*
6. *Guard file.*

By order

Dy./Asst. Registrar,
ITAT, Mumbai.