

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH "D", KOLKATA**

**BEFORE SH. J.SUDHAKAR REDDY, ACCOUNTANT MEMBER AND
SH. A.T.VARKEY, JUDICIAL MEMBER**

**ITA No.1529/KOL/2017
[Assessment Year: 2010-11]**

Pace Properties Pvt.Ltd., 8, Amartolla Street, 4 th Floor, Kolkata-700001. PAN-AABCP5767B	vs	ITO, Ward-5(2), Aaykar Bhawan, Kolkata- 700069.
(Appellant)		(Respondent)
Appellant by	None	
Respondent by	Sh. A. K.Tiwari, CIT DR	
Date of Hearing	31.07.2018	
Date of Pronouncement	30.08.2018	

ORDER

PER J.SUDHAKAR REDDY, ACCOUNTANT MEMBER

This appeal filed by the assessee against the order dated 24.03.2017 passed by CIT(A)-2, Kolkata for AY 2010-11 u/s 250 of the Income Tax Act, 1961 (in short "Act").

2. We find that the Ld. CIT(A) in this case has passed an ex-parte order, as the assessee had not appeared before him. He has not disposed of the case on merits. In these circumstances, we set aside this assessment to the file of the Ld.CIT(A) for fresh adjudication in accordance with law after giving the assessee adequate opportunity of being heard.

3. A cost of Rs.10,000/- is levied on the assessee for non-compliance. While doing so, we apply the proposition of law laid down by Hon'ble Bombay High Court in the case of *Vijay Vishin Meghani vs. The Deputy Commissioner of Income Tax Circle in ITA No. 493 of 2015 & 508 of 2015, dt. September 19, 2017*, wherein at para 11, it has been held as follows:-

"11. We do not find that any of these decided cases have any application to the facts before us. We have imposed the costs not because the appellant was not acting bona fide but finding that even after the legal advice was obtained, the matter was decided in favour of the assessee, there was time which was consumed and in all this delay of 2984 days occurred. While condoning such delay, it is permissible for court, in its discretion, to impose costs. Eventually, the rights and equities have to be balanced. To render substantial justice and not to enrich the Revenue that the costs have been imposed. It is not, therefore, a case

where the State has been allowed to retain any benefit or has been benefited by any directions. It is the Court which in its discretion has imposed this condition. We do not find any basis to alter it. The request in that behalf is refused.”

4. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 30.08.2018.

**Sd/-
(A.T.VARKEY)
JUDICIAL MEMBER**

**Sd/-
(J.SUDHAKAR REDDY)
ACCOUNTANT MEMBER**

*Date:- 30.08.2018
*Amit Kumar**

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1. Appellant- Pace Properties Pvt.Ltd., 8, Amartolla Street, 4th Floor, Kolkata-700001.
2. Respondent-ITO, Ward-5(2), Aaykar Bhawan, Kolkata-700069.
3. CIT-Kolkata
4. CIT(Appeals)-Kolkata
5. DR: ITAT-Kolkata Benches

Sr.P.S./H.O.O
ITAT, KOLKATA