

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

**BEFORE SHRI JOGINDER SINGH, JUDICIAL MEMBER AND  
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA No.497/M/2018  
Assessment Year: 2010-11**

Shri Mewalal Gupta, 98, Patel Compound, 3 <sup>rd</sup> Road, Khar (W), Mumbai – 400 052 <b>PAN: AEOPG9145A</b>	Vs.	Income Tax Officer- 9(1)(4), Mumbai
(Appellant)		(Respondent)

**Present for:**

Assessee by : None  
Revenue by : Shri S.K. Beparti, Sr.D.R.

Date of Hearing : 06.09.2018  
Date of Pronouncement : 17.09.2018

**ORDER**

**Per Rajesh Kumar, Accountant Member:**

The present appeal has been preferred by the assessee against the order dated 04.04.2017 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2010-11.

2. The grounds raised by the assessee are as under:

"1. The Ld. Commissioner of Income Tax (Appeals) erred in dismissing the Appellant's appeal merely because there was no appearance on the Appellant/assessee's behalf. The Ld. CIT(A) ought to have considered the merits of the Appellant's case, on the basis of materials before him.

2. The Ld. Commissioner of Income Tax (Appeals) failed to consider that there was no capital gain(s), during the year under consideration, since there was no transfer' of any capital asset during the year under consideration.

3. The Ld. Commissioner of Income Tax (Appeals) was not justified

in ignoring the fact that the Appellant had received the new flat in a redevelopment project and there can be no capital gain in the year in which the new residential premises are received by the assessee.

4. The appellant craves leave to add, alter, amend, modify any grounds of appeal.”

3. The issue raised in ground No.1 is against the order of Ld. CIT(A) dismissing the assessee’s appeal ex-parte due to non appearance by the assessee or his counsel and thus the issue was decided without considering the merit of the case by the CIT(A).

4. After perusing the relevant records as placed before us during the course of hearing and after hearing the Ld. D.R., we are of the opinion that assessee should be given one more opportunity to present his case before the Ld. CIT(A) interest of justice. Accordingly, we are restoring the issue back to the file of the Ld CIT(A) with the direction to decide the same on merit after affording a reasonable opportunity of being heard to the assessee.

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

**Order pronounced in the open court on 17.09.2018.**

**Sd/-  
(Joginder Singh)  
JUDICIAL MEMBER**

**Sd/-  
(Rajesh Kumar)  
ACCOUNTANT MEMBER**

Mumbai, Dated: 17.09.2018.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai

The CIT (A) Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.