

आयकर अपीलीय अधिकरण “B” न्यायपीठ मुंबई मे ।

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH, MUMBAI

श्री महावीर सिंह, न्यायिक सदस्य एवं श्री मनोज कुमार अग्रवाल लेखा सदस्य के समक्ष ।

BEFORE SRI MAHAVIR SINGH, JM AND SRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ ITA No. 7369/Mum/2017

(निर्धारण वर्ष / Assessment Year 2010-11)

आयकर अपील सं./ ITA No. 27/Mum/2018

(निर्धारण वर्ष / Assessment Year 2011-12)

Bluepeacock Securities Private Ltd. 234, Gulmohar Catherine CHS, TPS-III, Flat no. 303, 28th Road, Bandra (W), Mumbai-400 050	Vs.	The Income Tax Officer, Circle 12(1)(3), Room No. 262, 2 nd Floor, Aayakar Bhavan, M.K. Road, Mumbai-400 020
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
स्थायी लेखा सं./PAN No. AADCB8850F		

अपीलार्थी की ओर से / Appellant by : Shri Jayant R. Bhatt, AR

प्रत्यर्थी की ओर से / Respondent by : CA Kumar Singh, DR

सुनवाई की तारीख / Date of hearing:	08.10.2018
घोषणा की तारीख / Date of pronouncement :	08.10.2018

आदेश / ORDER

PER MAHAVIR SINGH, JM:

These appeals filed by the assessee are arising out of the orders of Commissioner of Income Tax-20, Mumbai [in short CIT(A)], in appeal nos



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CIT(A)-20/DCIT-12(1)(2)/IT-10252,10222/2016-17, of even date 15.11.2017. The Assessments were framed by the Income Tax Officer, Ward-12(1)(3), Mumbai (in short 'ITO/ AO') for the A.Ys. 2010-11, 2011-12 vide order of even date 29.03.2016 under section 143(3) read with section 147 of the Income Tax Act, 1961 (hereinafter 'the Act').

2. At the outset, the learned Counsel took us through the order of CIT(A) and stated that the CIT(A) has passed an ex-parte order without hearing the assessee. The learned Counsel for the assessee stated that assessee has taken the ground regarding violation of principle of Natural justice vide ground No. 1 in both the appeals. As grounds are exactly identical in both the appeals i.e. AY 2010-11 & 2011-12 respectively, we will take up the ground No.1 from AY 2010-11 and read as under: -

"1. Under the facts and circumstances of the Act and in law the Id. CIT(A) has erred in passing an exparte order under section 250 of the Act."

3. The learned Counsel for the assessee drew our attention to Para 3.1 of the order of CIT(A) which reads as under: -

"3.1 the notices of hearing were issued to the appellant, however, the appellant did not attend the hearing at any point of time. The details of the notices issued are as under:

Sr. No.	Date of Notice issued	Date of hearing	Remarks
1.	01.09.2017	13/09/2017	None attended. Letter of adjournment was filed on 13.09.2017
2.	20.09.2017	03.10.2017	None attended. Coy



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			<i>of Form No. 35 & Grounds of appeal file din Tapal on 04.10.2017</i>
3.	12.10.2017	24.11.2017	<i>Nobody attended.</i>
4.	24.10.2017	08.11.2017	<i>Nobody attended.</i>

”

4. The learned Counsel stated that on 13.09.2017 and 30.10.2017, assessee attended and filed the adjournment petition on first and second occasion. The assessee produced hard copy of Form No. 35 and ground of appeal, which was filed in Tapal 04.10.2017. The learned Counsel stated that on 24.11.2017, the assessee attended but no attendance was marked. However, on 08.11.2017, the assessee could not attend before the CIT(A). The learned Counsel stated that finally appellate order was passed on 15.11.2017 in both the years i.e. AY 2010-11 and 2011-12. In view of the above, the learned Counsel for the assessee stated that the CIT(A) has passed ex-parte order without hearing the assessee. The learned Counsel for the assessee only requested that the order of CIT(A) be set aside and matter be remanded back to the file of the CIT(A) for fresh adjudication after allowing reasonable opportunity of being heard to the assessee. When this was confronted to the learned Sr. Departmental Representative, he fairly agreed that the matter can be remanded back to the CIT(A) for fresh adjudication.

5. After going through the facts in entirety and case records, we are of the view that the CIT(A) should allow reasonable opportunity of being heard to the assessee. We find that the CIT(A) has not allowed reasonable opportunity of being heard to the assessee and passed ex-parte order. Hence, we set aside the order of CIT(A) and remand the matter back to the file of the CIT(A) for fresh adjudication.



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6. Similar is the finding in other Assessment year i.e. AY 2011-12.
7. **In the result, both the appeals of the assessee are allowed for statistical purposes.**

Order pronounced in the open court on 08-10-2018.

आदेश की घोषणा खुले मे दिनांक 08-10-2018 को की गई ।

Sd/-

(मनोज कुमार अग्रवाल / MANOJ KUMAR AGGARWAL)
(लेखा सदस्य / ACCOUNTANT MEMBER)

Sd/-

(महावीर सिंह /MAHAVIR SINGH)
(न्यायिक सदस्य/ JUDICIAL MEMBER)

Mumbai, Dated: 08-10-2018
Sudip Sarkar /Sr.PS

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT (A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.
//True Copy//

BY ORDER,

Assistant Registrar
ITAT, MUMBAI