

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

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND
SHRI RAJESH KUMAR, HON'BLE ACCOUNTANT MEMBER**

ITA NO.6331/MUM/2017 (A.Y: 2010-11)

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| Shri Nizammudin F. Shaikh Precision Fabricators W/21, MIDC, Kulgaon, Badlapur Dist, Thane PAN: ABBPS 3977 Q | v. | DCIT Circle -2, 2 nd Floor, Mohan Plaza, Wayle Nagar, Khandakpada, Kalyan (W) – 421 301 |
| (Appellant) | | (Respondent) |

Assessee by : Shri K.N. Shah
Department by : Shri B.B. Rajendra Prasad

Date of Hearing : 26.03.2019
Date of Pronouncement : 05.04.2019

ORDER

PER C.N. PRASAD (JM)

1. This appeal is filed by the assessee against the order of the Learned Commissioner of Income Tax (Appeals)-3, Thane, [hereinafter in short "Ld.CIT(A)"] dated 03.07.2017 for the Assessment Year 2010-11. Assessee challenged the order of the Ld.CIT(A) in passing the order exparte as well as in sustaining the penalty levied u/s. 271(1)(c) of the Act.

2. At the outset Learned Counsel for the assessee submitted that the Ld.CIT(A) passed order exparte, without providing one more opportunity to submit his case. He prayed that the appeals may be restored to the file of the Ld.CIT(A) for adjudication after providing adequate opportunity of being heard to the assessee.

3. Ld. DR objecting to the submissions of the Ld. Counsel and referring to the order of the Ld.CIT(A) submitted that, Ld.CIT(A) had given sufficient opportunity but the assessee could not appear before the Ld.CIT(A) and therefore the Ld.CIT(A) passed the order.

4. On hearing both the sides and on perusal of the order of the Ld.CIT(A), we find that one more opportunity should have been given to the assessee to prosecute the appeal. We have also observed that the assessee should have cooperated in the proceedings before the Ld.CIT(A) without remaining absent and attended the proceedings without seeking unnecessary adjournments. Thus, the assessee is now directed to cooperate with the proceedings before the Ld.CIT(A) without fail. With these observations this appeal is restored to the file of the Ld.CIT(A) for denovo adjudication after providing adequate opportunity of being heard to the assessee. We order accordingly.

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

Order pronounced in the open court on the 05th April, 2019

Sd/-
(RAJESH KUMAR)
ACCOUNTANT MEMBER
Mumbai / Dated 05/04/2019
Giridhar, Sr.PS

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

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

(Asstt. Registrar)
ITAT, Mum