

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

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

**ITA NOS. 7081 & 7082/MUM/2017
(A.Ys: 2010-11 & 2011-12)**

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| Ashit B. Doshi Flat No. 601, 6 th Floor Shree Samaerth, 607/C, Khareghat, Dadar (E) Mumbai – 400 014 PAN: AACPD 8921 F | v. | Income Tax Officer – 35(1)(2) C-12, Room No. 2 Ground Floor, Pratyakshkar Bhavan, Bandra Kurla Complex, Bandra(E), Mumbai – 400 051 |
| (Appellant) | | (Respondent) |

Assessee by : Shri Bhavesh P. Shah
Department by : Shri Satish Chandra Rajore

Date of Hearing : 01.05.2019
Date of Pronouncement : 08.05.2019

ORDER

PER C.N. PRASAD (JM)

1. These two appeals are filed by the assessee against the order of the Ld. Commissioner of Income-tax (Appeals)-46, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 22.02.2017 for the A.Y. 2010-11 & 2011-12 in dismissing these two appeals without admitting, on the ground that the assessee has not paid tax on the returned income.

2. Ld. Counsel for the assessee submitted that the assessee paid tax on returned income on 29.03.2017 subsequent to the Ld. CIT(A) passing order on 22.07.2017 and since the assessee has paid the admitted tax the appeals may be restored to the file of the Ld. CIT(A) for adjudication on merits. Ld. Counsel for the assessee placing reliance on the decision of the Mumbai Bench of the Tribunal in the case of Ms. Radhika R. Desai v. DCIT in ITSSA.No.24/AHD/2006 dated 11.02.2013 and the decision of the Ahmadabad Bench in the case of Prarthana Construction Pvt. Ltd., v. ITO in ITA.No. 3126/AHD/2011, submitted that on identical situation the Tribunal restored the appeal to the file of the Ld. CIT(A) for disposing off the appeal on merits as the assessee paid tax on returned income subsequent to passing order by the Ld. CIT(A).

3. Ld. DR has no serious objection in restoring the matter to the file of the Ld. CIT(A) for adjudicating the issues on merits.

4. We have heard the rival submissions, perused the orders of the Authorities below. On hearing both the sides and perusing the orders of the Ld. CIT(A), we find that these two appeals were dismissed by the Ld. CIT(A) invoking the provisions of Section 249(4) of the Act as the assessee has not paid the tax due on the returned income. On a perusal of the copies of challans furnished before us, we noticed that the assessee deposited tax of ₹.1,98,885/- on 29.03.2017 for the A.Y. 2010-11 and

₹.2,14,000/- on 29.03.2017 for the A.Y. 2011-12 towards tax on the income returned by the assessee. In the case of Ms. Radhika R. Desai v. DCIT (supra) the Mumbai Bench of the Tribunal remitted the appeal to the file of the Ld. CIT(A) for disposal on merits as the assessee has made the payment of tax on returned income subsequent to passing of the order by the Ld. CIT(A) which he dismissed on the ground that assessee has not paid taxes on the returned income. Similar view has been taken by the Ahmadabad Bench in the case of Prarthana Construction Pvt. Ltd., v. ITO (Supra).

5. Following the above said decisions, we restore these two appeals to the file of the Ld. CIT(A) for disposing of these appeals on merits after providing adequate opportunity of being heard to the assessee, as the assessee has complied with the provisions of Section 249(4) of the Act by paying tax on returned income for A.Ys. 2010-11 and 2011-12. Accordingly, these two appeals are restored to the file of the Ld. CIT(A).

6. In the result, appeals of the assessee are allowed for statistical purpose.

Order pronounced in the open court on the 08th May, 2019

Sd/-
(MANOJ KUMAR AGGARWAL)
ACCOUNTANT MEMBER

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

Mumbai / Dated 08/05/2019
Giridhar, 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

(Asstt. Registrar)
ITAT, Mum