

THE INCOME TAX APPELLATE TRIBUNAL
"SMC" Bench, Mumbai
Before Shri Shamim Yahya (AM)

I.T.A. No. 3189/Mum/2018 (Assessment Year 2012-13)

Mr. Praveen Bhaskar Rao B-104, 1 st Floor New Prabhat CHS Western Express Highway Near Bisleri Compound Andheri-East Mumbai-400 069. PAN : AFYPR2366F (Appellant)	Vs.	ITO-24(3)(3) Mumbai (Respondent)
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Assessee by	Shri Bhavin Parekh
Department by	Shri Chaitanya Anjaria
Date of Hearing	19.6.2019
Date of Pronouncement	01.7.2019

ORDER

This is an appeal by the assessee against the order of learned CIT-A dated 28.12.2016 pertaining to assessment year 2012-13 wherein learned CIT-A has dismissed the appeal for non-prosecution.

2. Brief facts of the case are that in the assessment order assessing officer made 20% disallowance of bus hire charges. Up on assessee's appeal learned CIT-A noted that nobody has represented the assessee despite notice. Hence he drew adverse inference and was of the opinion that the appeal was liable to be dismissed for non-prosecution. Thereafter he also held that in absence of further evidences he was upholding the order of Assessing Officer.

3. Against this order assessee is in appeal before the ITAT. I have heard both the counsel and perused the records. Learned counsel of the assessee submitted that authorities below have totally erred in appreciating the facts of the case. He submitted that assessee is an individual and he gets ticket for the

individual customers in different buses operated by different operators. He submitted that assessee gets only commission. He submitted that assessee has not hired any bus as such.

4. Up on careful consideration I find that these facts are not arising out of the order of the Assessing Officer. Moreover, I also find that it is incumbent upon the learned CIT-A to pass an order on the merits of the case and not dismiss the appeal for non-prosecution. For this proposition I place reliance upon following case laws.

1. CIT vs Premkumar Arjundas Luthra (HUF) (2017) 154 DTR (Bom)302
2. CIT vs S Chenniappa Mudaliar(1969)74 ITR 1(SC)

Accordingly in the interest of justice I remit the issue raised in the appeal the file of the learned CIT-A. Learned CIT-A is directed to consider the issue afresh and pass an order on the merits of the case after giving the assessee proper opportunity of being heard. Learned counsel of the assessee has also given undertaking that he shall appear before the learned CIT(A) suo motto within two months of this order to canvas the appeal.

5. In the result this appeal by the assessee stands allowed for statistical purposes.

Order has been pronounced in the Court on 1.7.2019.

SD/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 1/7/2019

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai

6. Guard File.

//True Copy//

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BY ORDER,

(Assistant Registrar)
ITAT, Mumbai