

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, AHMEDABAD**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER &
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

ITA No. 698/Ahd/2018
(Assessment Year : 2009-10)

Metal Trading, 490-491/B1/3, Chandan Complex, Opp. Himalaya Machinery, Makarpura, Vadodara -390 010.	Vs.	Income Tax Officer, Ward – 1(2)(1), Vadodara
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[PAN No. AAMFM 2120 P]

(Appellant)

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(Respondent)

Appellant by :	Ms. Urvashi Sodhan, A.R.
Respondent by :	Shri Satish Solanki, Sr. D.R.

Date of Hearing	13/09/2019
Date of Pronouncement	13/09/2019

ORDER

PER Ms. MADHUMITA ROY - JM:

The instant appeal filed by the assessee is directed against the ex-parte order dated 19.12.2016 passed by the Commissioner of Income Tax (Appeals) - 5, Vadodara arising out of the order dated 19.03.2015 passed by the Income Tax Officer, Ward-1(2)(1) under section 143(3) r.w.s 147 of the Income Tax Act, 1961 (hereinafter referred as to “the Act”) for the Assessment Year 2009-10.

2. At the time of hearing of the instant appeal, the Learned Counsel appearing for the assessee submitted before us that the assessee could not attain the hearing and the appeal has been decided on the basis of materials available on record before the Learned

CIT(A). It was further pointed out by the Learned Counsel that due to shifting of office to a new premise after 10 months from the filing of the said appeal, the notices issued by the Learned CIT(A) has not been received by the assessee since it was sent to the old address. The Learned AR further submits that inadvertently the new address was not informed to the Revenue authorities which was genuinely skipped from their mind due to passage of time. The ex-parte order passed by the Learned CIT(A) made known to the assessee by their bankers by the issuance of notices u/s 226(3) of the Act. The Learned AR further submitted an affidavit where the entire facts has been stated faithfully on oath; supporting documents thereof were also annexed to the said affidavit filed before us. Hence she prays for setting aside the issue to the Learned CIT(A). The Learned Counsel appearing for the assessee also submitted a copy of the judgment passed by the Hon'ble Jurisdictional High Court in the matter of CIT-vs-Simit P. Sheth on the merit of the matter. We, however, make it clear that we are not dealing with the merit of the matter hence the Learned CIT(A) is at liberty to consider the said judgment while deciding the matter on merit. On the other hand, the Learned DR has not raised any serious objection to such contention made by the Learned AR.

3. We have heard the rival submissions made by the parties, we have also perused the relevant materials available on record including the affidavit dated 19.08.2019 affirmed by the assessee. We are satisfied with the statements made by the assessee in his affidavit and also to this fact that the Learned AO by and under the notice u/s 226(3) of the Act dated 24.01.2018 directed the assessee to make payment of a sum of Rs.14,71,170/-, in default, the assessee shall be deemed to be an assessee in default. Hence real urgency exists in the matter to be disposed of by the Learned CIT(A) immediately. It is needless to mention that the said notice dated 24.01.2018 u/s 226(3) of the Act issued by the Learned AO is annexed to the said affidavit filed before us by the Learned AR. Since we find that the plea taken by the assessee for not appearing before the Learned CIT(A) is genuine and bonafide, for the ends of justice, we are inclined to set

aside the issue to the file of the Learned CIT(A). In that view of the matter, we set aside the issue to the file of the Learned CIT(A) with a further direction upon him to render an opportunity of being heard to the assessee within 4 weeks from the date of passing of this order by us and to finalize the issue within 4 weeks thereafter. The Learned CIT(A) is further directed to consider the materials available on record including the evidence which the assessee may choose to file at the time of hearing of the appeal before him. We further make it clear, that the assessee will also not pray for any unnecessary adjournment before the Learned CIT(A) and will also cooperate with the first appellate authority. Hence, assessee's appeal is allowed for statistical purposes.

4. In the result, assessee's appeal is allowed for statistical purposes.

This Order pronounced in Open Court on

13/09/2019

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Sd/-
(Ms. MADHUMITA ROY)
JUDICIAL MEMBER

Ahmedabad; Dated 13/09/2019
Priti Yadav, Sr.PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-5, Vadodara.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad