

आयकर अपीलीय अधिकरण "F" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "F" BENCH, MUMBAI

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

BEFORE SRI MAHAVIR SINGH, JM AND SRI RAJESH KUMAR, AM

आयकर अपील सं./ ITA No. 2242/Mum/2018

(निर्धारण वर्ष / Assessment Year 2013-14)

M/s Finetech Alloys Pvt. Ltd.

Gala No. 2 Opp Perna Complex,

Bhiwandi-421302

PAN – AABCF9091L

..... Applicant

v/s

The Income Tax Officer

2nd Floor, Rani Mansion Rd. Mumbai Rd,

Kalyan-421301

.....Respondent

अपीलार्थी की ओर से / Appellant by	:	Shri Naveenkumar Mishra, AR
प्रत्यर्थी की ओर से / Respondent by	:	Shri Rajeev Gubgotra, DR

सुनवाई की तारीख / Date of hearing:	27.08.2019
घोषणा की तारीख / Date of pronouncement :	27.08.2019

आदेश / ORDER

महावीर सिंह, न्यायिक सदस्य/

PER MAHAVIR SINGH, JM:

This appeal of assessee is arising out of the order of the Commissioner of Income Tax (Appeals)-2, Thane in ITA No. 10342/2016-17 dated 22.12.2017. The Assessment was framed by the Income Tax Ward 1(1), Kalyan (in short ITO/ AO) for AY 2013-14 vide dated 29.02.2016, under section 144 of the Income-tax Act, 1961 (hereinafter 'the Act').

2. At the outset, the learned Counsel for the assessee as well as the learned Sr. DR stated that the CIT(A) has passed ex-parte order and for this assessee has raised the following ground No. 1: -

“1. On the facts and in the circumstances of the case and in (aw the Hon'ble CIT(A) erred in upholding action of Ld. AO by passing an ex-parte order u/s. 144 of the IT Act 1961 and the reason assigned for doing so are wrong and contrary to the provision of Income Tax Act and rules made there under.

3. The assessee has also raised the ground on merits, which read as under: -

2. On the facts and in the circumstances of the case and in Law the Hon'ble CIT (A) erred in upholding the action of Ld. AO of making addition of Rs.1,88,94,000/- by estimating the NP @ 5% of Turnover of Rs. 37,78,79,104/- and rejecting the books of accounts u/s. 145(3) of the Act and the reasons assigned for doing so are wrong and contrary to the provision of Income Tax Act and rules made there under.”

4. The learned Counsel for the assessee as well as the learned DR agreed that the CIT(A) has passed ex-parte order and the order of CIT(A) is not a speaking order as he has confirmed the findings of the AO as it is without considering the records or material. The learned Counsel for the assessee stated that even the order of the AO is ex-parte. The learned Sr. DR stated that the AO as well as CIT(A) has allowed many opportunities to the assessee by issuing notices for different dates fixing

the assessment proceedings or the appellate proceedings, as the case may be, but the assessee has not availed the opportunity. We noted that it is a fact that the assessee has avoided the proceedings before the AO as well as before CIT(A) but in the interest of natural justice, we set aside the orders of the lower authorities and remand the matter back to the file of the AO for fresh adjudication. Needless to say, the assessee will present itself as and when call by the AO for framing assessment and will provide documents and evidences as authorized under law. Hence, the orders of the AO and the CIT(A) are set aside and appeal of the assessee is remanded back to the file of the AO.

5. In the Result, the appeal of assessee is allowed for statistical purposes.

Order pronounced in the open court on 27.08.2019.

Sd/-

(राजेश कुमार / RAJESH KUMAR)

(लेखा सदस्य / ACCOUNTANT MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 27.08.2019

सुदीप सरकार, व.निजी सचिव / Sudip Sarkar, Sr.PS

Sd/-

(महावीर सिंह / MAHAVIR SINGH)

(न्यायिक सदस्य/ JUDICIAL MEMBER)

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai