

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

**BEFORE SHRI PRAMOD KUMAR, VICE PRESIDENT AND
SHRI VIKAS AWASTHY, JUDICIAL MEMBER**

ITA NOS. 2605 & 2606/MUM/2019 : A.Ys : 2011-12 & 2012-13

Rasiklal Kantilal & Co.,
145, Kika Street, Gulalwadi,
Mumbai 400 004.

Vs. CIT(A)-39, Mumbai.
(Respondent)

PAN : AABFR2493K (Appellant)

Appellant by : Shri Deepak Tralshawala

Respondent by : Shri Michael Jerald

Date of Hearing : 08/11/2019

Date of Pronouncement : 15/11/2019

ORDER

PER VIKAS AWASTHY, JUDICIAL MEMBER

These two appeals by the assessee are directed against the orders of Commissioner of Income Tax (Appeals)-39, Mumbai (hereinafter referred to as 'CIT(A)') for the assessment year 2011-12 and 2012-13, respectively. Both the impugned orders are dated 31.01.2019.

2. Shri Deepak Tralshawala appearing on behalf of the assessee submitted at the outset that the CIT(A) dismissed the appeals of the assessee in an *ex parte* proceedings. The CIT(A) failed to take note of the adjournment request letter filed before him. The learned AR contended that the CIT(A), without

appreciating the facts on record, has upheld the validity of reopening, as well as, the addition on merits.

3. On the other hand, Shri Michael Jerald representing the Department vehemently defended the impugned order. The learned DR pointed that several opportunities were granted to the assessee, however, the assessee failed to appear before the CIT(A).

4. Both sides heard. These appeals by the assessee for assessment years 2011-12 and 2012-13 are against *ex parte* order of CIT(A). A perusal of the impugned orders reveal that the first date of hearing of appeal was fixed on 14.03.2018. On the said date, the assessee filed letter seeking adjournment. Thereafter, the appeals were adjourned to 06.04.2018, 01.11.2018, 22.11.2018, 13.12.2018 and finally to 23.01.2019. On none of the aforesaid dates, the AR of the assessee appeared before the First Appellate Authority. From perusal of records, it is evident that the assessee is non-compliant. On the first three dates of hearing, the assessee filed adjournment letters, on the later three dates of hearing, the assessee did not even bother to attend the proceedings or file request for adjournment. It is not a case where the First Appellate Authority failed to grant sufficient opportunity of hearing to the assessee. However, in the interest of justice and equity, we deem it appropriate to give one more opportunity to the assessee to defend his appeal before the First Appellate Authority. Keeping in view the conduct of assessee, it is a fit case for levy of costs. These appeals are restored back to the file of the CIT(A) for deciding the appeals on merit, subject to payment of costs of Rs.10,000/- for each appeal by the assessee.

5. The costs of Rs.10,000/- in each of the appeals shall be paid by the assessee in accordance with Rule 32A(2) of the ITAT Rules, 1963 within a period of three weeks from the date of receipt of this order. On payment of the costs and furnishing evidence of the same, the CIT(A) shall entertain the appeals of the assessee and shall decide the same after affording reasonable opportunity of hearing to the assessee, in accordance with law. It is made clear that if the assessee fails to deposit the costs within the time aforementioned, the appeals of the assessee shall be deemed to be dismissed.

6. In the result, the appeals of the assessee are allowed for statistical purpose with costs, as aforementioned.

Order pronounced in the open court on Friday, the 15th day of November, 2019.

Sd/-
(PRAMOD KUMAR)
VICE PRESIDENT

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

Mumbai, Date : 15th November, 2019

SSL

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "D" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai