

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "G" MUMBAI**

**BEFORE SHRI RAJESH KUMAR, HON. ACCOUNTANT MEMBER &
SHRI AMARJIT SINGH, HON. JUDICIAL MEMBER**

**ITA No. 5345/MUM/2018
(Asst. Year : 2014-15)**

Shabihul Hassan Syed,
401, 4th Floor, Galaxy
Apartment, Plot NO. 26,
Sector-1, Sanpada, Mumbai.

Vs. ITO-17(3)(3),
Mumbai.

PAN No. AAFPS 4819 N
(Appellant)

(Respondent)

Assessee by : Shri Ajay R. Singh, Adv.
Department By : Shri V. Vinod Kumar, Sr. DR

Date of hearing : 03/12/2019.

Date of pronouncement : 03/12/2019.

ORDER

PER RAJESH KUMAR, ACCOUNTANT MEMBER

This is an appeal filed by the assessee against the order of Commissioner of Income Tax (Appeals)-28, Mumbai, dated 17/07/2018 for the A.Y. 2014-15.

2. Ld.AR at the outset submitted that the Id.CIT(A) as well as AO has passed ex-parte orders for which the assessee is in no way responsible as the reason were beyond the control of the assessee. The Id.AR, in support of his arguments, filed an affidavit of the assessee stating that Shri V.G. Prasad, Tax

Consultant was looking after the tax matters and was authorised to appear before the AO, however, he fell sick in 2016 and diagnosed with cancer and ultimately went into coma. Ld.AR further submitted that Shri V.G. Prasad is still under medical treatment and is on the death bed. He further submitted that assessee tried several times to contact him and also visited his residence to meet him personally, but could not collect the file as his family did not allow the assessee to meet him. Thus, the assessee could not file the evidences and details before the authorities below, which resulted into passing *ex-parte* orders by the AO as well as Id.CIT(A). Ld.AR prayed before the Bench that one more opportunity may kindly be granted to the assessee to represent his case before the AO by restoring the matter to the file of the AO in the interest of justice and fair play.

3. Ld.DR, on the other hand, left the issue to the discretion of the Bench when a query was put to him on the *ex-parte* orders passed by the authorities below especially in view of the serious ailment of the counsel of the assessee.

4. After hearing the rival contentions of both the parties and perusing the material on record, we observe that the proceedings before the Id.CIT(A) as well as AO went *ex-parte* due to illness of the counsel of the assessee, who was diagnosed with cancer and

is still confine to bed. We are convinced about the reasons which are apparently beyond the control of the assessee due to which the assessee could not represent the case before the AO and Id.CIT(A). Therefore, in the interest of justice and fair play, we are inclined to set aside the appeal to the file of the AO with a direction to decide the same *denovo* after giving reasonable opportunity of hearing to the assessee.

5. In the result, appeal of the assessee is allowed for statistical purpose.

Order Pronounced in the open Court on 03rd December, 2019

Sd/-
(AMARJIT SINGH)
Judicial Member

sd/-
(RAJESH KUMAR)
Accountant Member

Dated : 03rd December, 2019.

vr/-

Copy to:

1. The Assessee - Shabihul Hassan Syed, 401, 4th Floor, Galaxy Apartment, Plot NO. 26, Sector-1, Sanpada, Mumbai.
2. The Revenue - ITO-17(3)(3), Mumbai.
3. The Pr.CIT-17, Mumbai.
4. The CIT(A)-28, Mumbai.
5. The D.R., Mumbai.
6. Guard file.

By order

//True Copy//

Assistant Registrar
I.T.A.T., Mumbai