

आयकर अपीलीय अधिकरण "B" न्यायपीठ मुंबई में।

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

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

BEFORE SRI MAHAVIR SINGH, JM AND SRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ ITA No. 7590/Mum/2016

(निर्धारण वर्ष / Assessment Year 2011-12)

आयकर अपील सं./ ITA No. 7589/Mum/2016

(निर्धारण वर्ष / Assessment Year 2009-10)

Shri Bhuleshwar T. Mishra Flat No. A-1/103, Orchid Plaza, RK Thakur Road, Dahisar, Mumbai-400 068	बनाम/ Vs.	The Dy. Commissioner of Income Tax, Central Circle-2 Thane
(अपीलार्थी / Appellant)		(प्रत्यर्थी/ Respondent)
स्थायी लेखा सं./PAN No. AALPM9296P		

अपीलार्थी की ओर से / Appellant by	:	Shri Dharan V. Gandhi, AR
प्रत्यर्थी की ओर से / Respondent by	:	Shri K. Madhusudan, CIT DR

सुनवाई की तारीख / Date of hearing:	26.11.2019
घोषणा की तारीख / Date of pronouncement:	26.11.2019

आदेश / ORDER

महावीर सिंह, न्यायिक सदस्य/

PER MAHAVIR SINGH, JM:

These appeals of assessee are arising out of the different orders of the Commissioner of Income Tax (Appeals)-2, Thane



[in short CIT(A)], in appeal No. Pn./CIT(A)-11/DCIT Cen Cir 2, Thane/51,53/2015-16 vide dated 08.11.2016. The Assessments were framed by the Dy. Commissioner of Income Tax, Central Centre-2, Thane (in short DCIT/ AO) for the A.Ys. 2009-10, 2011-12 vide orders dated 27.03.2015 under section 143(3) of the Income-tax Act, 1961 (hereinafter 'the Act').

2. At the outset, it is noticed that in both the appeals the assessee has raised identically worded grounds regarding violation of principle of natural justice and passing order without providing adequate opportunity of being heard. The grounds raised in both the years are as under: -

"For AY 2011-12

1. On the facts and circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals) erred in passing an order without giving an adequate opportunity of being heard.

For AY 2009-10

1. On the facts and circumstances of the case and in law the Ld. Commissioner of Income Tax (Appeals) erred in passing an order without giving an adequate opportunity of being heard."



3. On this point, the learned Counsel for the assessee stated that the CIT(A) has decided the appeal ex-parte and the relevant observation in ITA No. 7590/Mum/2016 for AY 2011-12 read as under: -

"3. None has attended on behalf of the appellant but written submissions have been filed on 02.11.2016 vide letter dated 25.10.2015. The written submissions are common for all the asst years from 2007-08 to 2013-15. As the hearing notices were issued more than a dozen times and the appellant has chosen not to represent except for the written submissions, the appeal is being disposed off considering the written submissions."

4. Even, we noted that the order of CIT is a non-speaking order and he has not discussed the merits regarding addition. When these facts were confronted to the learned Sr. Departmental Representative, he fairly stated that the issue can be remitted back to the file of the CIT(A) for fresh adjudication.

5. After hearing both the sides and going through the facts of the case, we noted that the appeals were decided ex-parte without providing opportunity of being heard to the assessee. Even, the orders passed by CIT(A) is not a speaking order on merits. In the light of these facts, we restore these two appeals back to the file of the CIT(A) for fresh adjudication. Needless to say that the CIT(A) will provide a reasonable opportunity of



being heard to the assessee. The orders of the CIT(A) are set aside and these appeals are allowed for statistical purposes.

6. In the result, both the appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open court on 26.11.2019.

Sd/-

(मनोज कुमार अग्रवाल / MANOJ KUMAR AGGARWAL)
(लेखा सदस्य / ACCOUNTANT MEMBER)

Sd/-

(महावीर सिंह / MAHAVIR SINGH)
(न्यायिक सदस्य/ JUDICIAL MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 26.11.2019.

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

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