



ITA No.7236/Mum/2019 &
SA No.492/Mum/2019
M/s. A.G. Total Success Orbits (India) Private Limited
Assessment Year-2015-16

आयकर अपीलीय अधिकरण “ऐ” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, MUMBAI

माननीय श्री महावीर सिंह, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI MAHAVIR SINGH, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM

ITA No.7236/Mum/2019

&

S.A. No.492/Mum/2019

[Arising Out of ITA No.7236/Mum/2019]

(निर्धारणवर्ष / Assessment Year: 2015-16)

M/s. A.G. Total Success Orbits (India) Pvt.Ltd. 2001/A, Sherly Rajan Road Continental Towers, Bandra West Mumbai-400 050	बनाम/ Vs.	Income Tax Officer-12(1)(1) 2 nd Floor, Aaykar Bhawan Mumbai – 400 020
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AAECA-6130-A		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	S/Shri Mayur Kisanadwala, Sunil K. Ramani and Shri Vinay Sinha- Ld.ARs
प्रत्यर्थी की ओर से/ Respondent by	:	Shri Vinod Kumar, Ld. Sr. DR
सुनवाईकीतारीख/ Date of Hearing	:	27/12/2019
घोषणाकीतारीख / Date of Pronouncement	:	27/12/2019



आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member): -

1. By way of this Stay Application for Assessment Year [AY] 2015-16, the assessee is seeking stay of outstanding demand of Rs.67.49 Lacs. Upon hearing rival contentions, it transpires that the appellate order under challenge is an *ex-parte* order and one of the grounds raised by the assessee in the appeal is violation of principle of natural justice. Therefore, the bench formed an opinion that it would be in the fitness of things to remit the matter back to the file of learned first appellate authority since the assessee had *bona-fide* reasons which precluded it to participate in the appellate proceedings before Ld. CIT(Appeals)-20, Mumbai.
2. During hearing, when the bench expressed the stated opinion, both the representatives were gracious enough to give consent to proceed with adjudication of quantum appeal itself. Accordingly, the bench proceeded to dispose-off the quantum appeal itself as argued.
3. The material on record would show that in an assessment framed u/s 143(3) on 29/11/2017, the assessee was saddled with certain addition on account of short-term capital gains. Although the assessee preferred further appeal against the same, however, it failed to appear before Ld. CIT(A) on several occasions. Left with no option, the matter was proceeded with *ex-parte qua* the assessee and the appeal was dismissed, confirming the



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stand taken by Ld. AO. Aggrieved, the assessee is under further appeal before us.

4. The Ld. Authorized Representative for Assessee (AR), submitted that an adjournment application was filed electronically by the assessee on 17/09/2019 which remained to be considered by Ld. CIT(A) and the same resulted into dismissal of appeal *ex-parte qua* the assessee. In the above background, Ld. AR pleaded for another opportunity of hearing in the matter. The Ld. DR submitted that the assessee remained negligent in attending the appellate proceedings despite being provided with several opportunity of being heard.

5. Upon careful consideration, keeping in view the stated factual matrix and keeping in view the principles of natural justice, the bench formed an opinion that the assessee deserves another opportunity of hearing in the matter. Accordingly, the impugned order dated 24/09/2019 is set-aside and the matter is restored back to the file of Ld. CIT(A) for re-adjudication after providing due opportunity of being heard to the assessee. However, in case of failure on the part of the assessee to attend appellate proceedings diligently, the appeal may be proceeded with on the basis of material on record.

6. Since quantum appeal has been adjudicated, the stay application becomes infructuous and therefore, dismissed.



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7. Accordingly, ITA No. 7236/Mum/2019 stand partly allowed for statistical purposes whereas stay application SA No. 492/Mum/2019 stand dismissed as infructuous.

Order pronounced in the open court on 27th December, 2019.

Sd/-

(Mahavir Singh)

न्यायिक सदस्य / **Judicial Member**

मुंबई Mumbai; दिनांक Dated : 27/12/2019

Sr.PS:-Jaisy Varghese

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

आदेश की प्रतिलिपि □ प्रेषित/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– concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

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