

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

BEFORE SHRI R.C.SHARMA, ACCOUNTANT MEMBER

**ITA No.192/Mum/2019
(Assessment Year: 2010-11)**

M/s Sanwarmal Durgadutt, 43-CD, Govt. Ind. Estate, Charkop, Kandivali(W), Mumbai-400067.	Vs.	I.T.O. Ward 33(3)(3), C-12, Pratyakshakar Bhawan, Bandra Kurla Complex, Bandra (E), Mumbai-400051.
PAN/GIR No.AABFS 6651 E		
(Appellant)	..	(Respondent)

Assessee by	Shri Ravikant Pathak (AR)
Revenue by	Shri Akhtar H Ansari (DR)
Date of Hearing	22/01/2020
Date of Pronouncement	23/01/2020

आदेश / O R D E R

PER: R.C. SHARMA, A.M.

This appeal by the assessee is directed against the ex parte order dated 16/10/2018 of Id. CIT(A)-45, Mumbai for the A.Y. 2010-11 in the matter of order passed u/s 143(3) r.w.s. 147 of the Income Tax Act, 1961 (in short, the Act).

2. In this appeal, the assessee is basically aggrieved for the ex parte order passed both by the A.O. and the Id. CIT(A) wherein various disallowances have been made. It was contended by the Id AR of the assessee that there was a dispute in the family, therefore,

necessary documents asked by the A.O. could not be filed since the person aggrieved was not handed over the records. An affidavit to this effect was also filed before the Tribunal.

3. I have gone through the affidavit so filed, which reads as under:

I, Mr. Mohammed Hanif Mohammed Ayub Sayyed aged about 35 years, son of Mr. Mohammed Ayub Sayyed, currently residing at C-601/602, Shivdham CHS Ltd, New Link Road, Near Movietime Theater, Malad (West), Mumbai 400064, do hereby solemnly affirm and state as under:

- 1. That I am an educated person. I can understand, speak and write English.*
- 2. That in the year 2002, my family took over the running business of M/s Sanwarmal Durgadutt by becoming the partners in that firm. Accordingly, my mother Mrs. Ameendun Nisha Sayyed, My elder brother Mohammed Habib Sayyed and myself became partner in the firm.*
- 3. That after taking over the business my father was looking after the business of the firm. I and my elder brother, though new in the business, were helping my father in our business. My father was also running proprietary business in the name of m/s Habib Founders and Engineers. Business of the firm as well as proprietary concern was that of manufacture of metal castings in a foundry.*
- 4. That somewhere in the year 2003, my elder brother Mohammed Habib got married to a girl who was non-*

muslim. My father was therefore, very much upset. Due to this there were disputes in the family and ultimately, Habib retired from the partnership firm.

5. *That after two years, dispute was settled and Mohammed Habib again started helping us in the business. But peace did not last very long. After my marriage, again quarrel started in the family. To settle this, a separate house was purchased and my elder brother was shifted there. Still he was not happy and was raising many issues for his rights. To settle this also my father shifted the foundry to Vasai (Dist Palghar) and asked Mohammed Habib to manage the business.*
6. *That due to ongoing issues in the family, Mohammed Habib was not co-operating the family in its business. Without realising the consequences, many letters received from customers, suppliers and government authorities were kept by Mohammed Habib unattended and did not take any action on it. Due to this there were delays in receiving payments from the customers. This affected the business very badly. That the papers stated above inter alia include the notices /papers/orders from Income Tax Authorities.*
7. *That my father, therefore, reduced the business activities and gave part of the factory on rent and asked Mohammed Habib to attend the foundry set up at Vasai. Again here also he made a mess and created huge liability for making payments to suppliers. There also my father decided to close the business and gave factory on rent.*

8. *That recently, to settle the dispute forever, my father decided to gift his running proprietary business to my elder brother Mohammed Habib. However, when I put a condition that all the liability of the firm M/s Sanwarmal Durgadutt should be cleared paid by him, he backed out and declined to accept this offer.*
9. *That due to above disputes in the family as well as in the business, no one appeared before the assessing officer and Commissioner of Income tax (Appeals) resulting into passing of ex-parte orders.*

I, Mohammed Hanif Mohammed Ayub Sayyed, Solemnly affirm on oath that to the best of my knowledge and belief, whatever stated above is true and correct.

Mohammed Hanif Mohammed Ayub Sayyed

Deponent"

4. It is clear from the affidavit that due to dispute being going on in the family, the records could not be produced before the A.O. Therefore, in the substantial interest of justice, I restore the matter back to the file of the A.O. for deciding the issue afresh after providing reasonable opportunity of being heard. The assessee is also directed to appear with all the records within a period of 60 days from the date of receipt of this order. The A.O. is at liberty to pass order in case of any failure on the part of assessee to produce necessary record before him. I direct accordingly.

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

Order pronounced in the open court on 23rd January, 2020.

**Sd/-
(R.C.SHARMA)
ACCOUNTANT MEMBER**

Mumbai; Dated 23/01/2020

*Ranjan

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai