

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

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND  
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

**ITA NO. 3058/MUM/2013**

**A.Y : 2009-10**

Nikhil U. Singh  
24/B, Nensey Cottage,  
Sant Gyneshwar Road,  
Western Express Highway,  
Borivali (E), Mumbai 400 066.  
**PAN : AVKPS0230R** (Appellant)

vs. ITO – 25(1)(4),  
Mumbai. (Respondent)

**Appellant by : Shri Dharmesh Shah &  
Shri Kiran Mehta**

**Respondent by : Ms. Kavita P. Kaushik**

**Date of Hearing : 29/01/2020**

**Date of Pronouncement : 29/01/2020**

**ORDER**

**PER MAHAVIR SINGH, VICE PRESIDENT**

This appeal is filed by the assessee against the order of CIT(A)-35, Mumbai dated 06.03.2013 for assessment year 2009-10 which in turn has arisen from order of Assessing Officer passed under Section 143(3) of the Income Tax Act, 1961 (in short 'the Act') dated 30.12.2011.

2. At the outset, the learned counsel for the assessee as well as the learned Senior DR stated that the order of CIT(A) is *ex parte* and even a non-speaking

order. The learned counsel for the assessee drew our attention to para 5.3.11 of the order of CIT(A), wherein the CIT(A) has just dismissed the appeal of assessee by observing as under :-

*“5.3.11 Since the appellant has not filed any rebuttal against the stand taken by the AO or the merit of his stand and ground, the appellant’s ground cannot be allowed. The onus is cast on the appellant to prove that whatever has been reflected in the income tax return are true and correct by corroborating the same with the relevant details and evidences, but the same has not been discharged by the appellant in the present case for the reasons best known to the appellant. Under the circumstances no interference is being made in the assessment order.”*

3. We noted that the CIT(A) has dismissed the appeal of assessee without passing a speaking order just for the absence of the assessee, i.e. for default of the assessee. The learned counsel for the assessee as well as the learned Senior DR agreed that the matter can be restored back to the file of CIT(A) for allowing reasonable opportunity of being heard to assessee and also for passing a speaking order on merits. Hence, we set aside the order of CIT(A) and remand the matter back to his file.

4. In the result, appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 29<sup>th</sup> January, 2020.

Sd/-  
**(MANOJ KUMAR AGGARWAL)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(MAHAVIR SINGH)**  
**VICE PRESIDENT**

Mumbai, Date : 29<sup>th</sup> January, 2020

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Copy to :

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

By Order

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