

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

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

ITA NO. 194/MUM/2019

A.Y : 2009-10

Manish Jadavji Chheda
Ground Floor, Amba Niwas,
Park Road, Vile Parle (E),
Mumbai 400 057.

vs. CIT(A) – 53,
Mumbai. (Respondent)

PAN : AABPC3385M (Appellant)

Appellant by : None

Respondent by : Ms. Joti Lakshmi Nayak

Date of Hearing : 28/01/2020

Date of Pronouncement : 28/01/2020

ORDER

PER MAHAVIR SINGH, VICE PRESIDENT

This appeal is filed by the assessee against the order of CIT(A)-53, Mumbai dated 12.10.2018 for assessment year 2009-10 which in turn has arisen from order of Assessing Officer passed under Section 143(3) r.w.s. 147 of the Income Tax Act, 1961 (in short 'the Act') dated 26.12.2016.

2. None appeared for the assessee. At the outset, we noticed that the CIT(A) has passed an *ex parte*, non-speaking order vide para 4.2 and 4.3 of the impugned order, which reads as under :

“4.2 The appeal has been e-filed on 17.1.2007. The notice for hearing on 16.8.18 was issued through email as well as post at the addresses mentioned in the appeal memo. On no response, another notice was issued through email and through assessing officer for hearing on 5.10.2018. The assessing officer intimated and forwarded the service of notice. The notice was physically served on the assessee on 20-09-2018. There was no response to the notice. Further, no submission or paper book was filed till date. It is presumed that the appellant is not serious in prosecuting this appeal.

4.3 It is noted that the appellant was provided with the details of trades in which client code was modified. The appellant has not provided details of how the instructions for trade were given, who received the instructions. He has not explained how and why client code were modified. These are not mere punching errors when at best one or two digits may have got punched incorrectly. The error is over several digits. Further the instances are not few but several in numbers. Taken cumulatively, this indicates booking of losses. Such losses have been disallowed by the assessing officer. The disallowance is upheld. The ground of appeal is dismissed.”

3. We noted that the CIT(A) has dismissed the appeal of assessee without passing a speaking order just in the absence of the assessee, i.e. for default of the assessee. The learned 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.

Order pronounced in the open court on 28th January, 2020.

Sd/-
(MANOJ KUMAR AGGARWAL)
ACCOUNTANT MEMBER

Sd/-
(MAHAVIR SINGH)
VICE PRESIDENT

Mumbai, Date : 28th January, 2020

SSL

Copy to :

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

By Order

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