

THE INCOME TAX APPELLATE TRIBUNAL
"A" Bench, Mumbai
Before Shri Shamim Yahya (AM) & Shri Ravish Sood (JM)

I.T.A. No. 4840/Mum/2018 (Assessment Year 2014-15)

Mr. Aman Arian Motwane C/o. Rohira Mehta & Associates, CAs B-202, 2 nd Floor Grand Bella Vista, S.V. Road, Bandra West Mumbai-400 050. PAN : AAOPM0969N (Appellant)	Vs.	ITO(International Taxation), Ward 3(2)(1) Air India Building Nariman Point Mumbai-400 021. (Respondent)
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Assessee by	Shri Nirav B. Mehta
Department by	Shri Ravinder Sindhu
Date of Hearing	13.1.2020
Date of Pronouncement	3.03.2020

ORDER

Per Shamim Yahya (AM) :-

This is an appeal by the assessee against the order of learned CIT(A) dated 15.6.2018 pertaining to assessment year 2014-15 wherein learned CIT(A) has dismissed the appeal for non-prosecution.

2. The grounds of appeal read as under :-

1. The Appellant is a Non-Resident Indian having foreign address - P.O.Box 984, Redondo Beach, CA 90277, United States of America.
2. The date of hearing for appeal filed by the Appellant was fixed on 07-01-2018 and 25-04-2018 as mentioned in the Appellate Order passed by the learned Commissioner of Income Tax (Appeals)-57, Mumbai on 15-06-2018.
3. The Appellant had not received any of the notice for hearing of appeal as mentioned in Point no.2 above through e-mail or post since the address of the Appellant was mentioned in Form no.35 i.e. C-5, Mittal Park, 44, J.R.Mhatre Road, Juhu, Mumbai-400 049 (The property which is sold by the appellant) and therefore was not able to attend the hearing on the stipulated date through his Authorised Representative.

4. The learned Commissioner of Income Tax (Appeals) erred in confirming the addition of Rs. 23,31,563/- made by the learned Assessing Officer being difference in long term capital gain on sale of property (50% share of the appellant) by not allowing the indexation for the year of purchase of the previous owner from whom property was inherited.

3. In this case upon assessee's appeal learned CIT(A) has dismissed the appeal for non-prosecution by observing as under :-

"It is seen from the records that appellant had filed case on 11.01.2017. Appellant was served notice of hearing on 07.01.2017 and was also given final opportunity of hearing on 25.04.2018 but neither appellant nor authorized representative of appellant has attended any hearing nor sought adjournment. Therefore based on records available on merits this appeal is being dismissed."

4. Upon hearing both the counsel and perused the records. We find that it is incumbent upon the learned CIT-A to pass an order on the merits of the case and not dismissed the appeal for non-prosecution. For this proposition, we place reliance upon following case laws.

1. CIT vs Premkumar Arjundas Luthra (HUF) (2017) 154 DTR (Bom)302
2. CIT vs S Chenniappa Mudaliar(1969)74 ITR 1(SC)

4. Accordingly in the interest of justice, we remit the issue raised in the appeal the file of the learned CIT(A). Learned CIT(A) is directed to consider the issue afresh and pass an order on the merits of the case after giving the assessee proper opportunity of being heard.

5. Learned counsel of the assessee has also given undertaking that he shall appear before the learned CIT(A) suo-motto within two months of this order to canvas the appeal.

6. In the result this appeal by the assessee stands allowed for statistical purposes.

Order has been pronounced in the Court on 03.03.2020.

Sd/-
(RAVISH SOOD)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 03/03/2020

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

PS