

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

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND
SHRI N.K. PRADHAN, HON'BLE ACCOUNTANT MEMBER**

ITA NO. 7478/MUM/2018 (A.Y: 2014-15)

Shri Shankar Agarwal Sagar Sukhshiti, 5 th Road Behind Cooper Hospital Juhu Scheme, Mumbai – 400 056 PAN: AABPA3548G	v.	ACIT – 17(3) Aayakar Bhavan M.K. Road Mumbai – 400 020
(Appellant)		(Respondent)

Assessee by : **Shri Dr. P. Daniel**
Department by : **Shri A.R. Udaya Bhaskar Jakka**

Date of Hearing : **29.01.2020**
Date of Pronouncement : **27.02.2020**

ORDER

PER C.N. PRASAD (JM)

1. This appeal is filed by the assessee against the order of the Learned Commissioner of Income Tax (Appeals) – 28, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 12.09.2018 for the Assessment Year 2014-15.

2. Assessee has raised the following grounds in its appeal: -

I. A) The Learned Commissioner of Income Tax (Appeals) erred in violating the principal of natural Justice by not issuing notice of hearing to the assessee.

B) The Learned CIT(A) erred in not issuing notice of hearing at the correct address. The correct address specified

in Form No.35 and assessment order but notice were issued at the old address.

- II.
 - a. *The Learned CIT(A) erred in law and on facts of the case not allowing to set off business losses or Short Term Capital Losses of earlier years against Capital Gain arises on account of depreciable assets U/s.50 of the I.T. Act 1961.*
 - b. *The Learned CIT(A) erred in law and on the facts of case in confirming the tax rate 30% instead of 20%, as Gain is on account of Long Term Capital Assets.*
- III. *The appellant crave leave to submit additional grounds of appeal, if any, at or before the time of hearing and / or after, modify, reframe any grounds of appeal at or before the time of hearing.*

3. At the outset, Ld. Counsel for the assessee submitted that the notices for hearing has been forwarded to the old address of the assessee and hence assessee could not attend the proceedings before the Ld.CIT(A). Ld. Counsel for the assessee submits that Ld.CIT(A) passed exparte order without providing adequate opportunity of being heard to the assessee, therefore, requested that the matter may be restored to the file of the Ld.CIT(A).

4. Ld. DR has no serious objection in remitting the matter back to the file of the Ld.CIT(A).

5. We have heard the submissions, perused the orders of the authorities below. On a perusal of the Ld.CIT(A) order, we find that the even though the Ld.CIT(A) provided opportunity on several occasions assessee could not appear as the notices were sent to old address.

Considering the totality of facts and submissions of the Ld. Counsel for the assessee and keeping in view the additions/disallowance made by the Assessing Officer, in the interest of justice we are of the opinion that assessee should be given one more opportunity of being heard. Thus, this appeal is restored to the file of the Ld.CIT(A) for denovo adjudication in accordance with law. Assessee shall cooperate with the proceedings before the Ld.CIT(A) without taking unnecessary adjournments. Thus, this appeal is restored to the file of the Ld.CIT(A) accordingly.

6. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on the 27th February, 2020

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER
Mumbai / Dated 27/02/2020
Giridhar, Sr.PS

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

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.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum