

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI 'SMC- I' BENCH, MUMBAI**

[Coram: Pramod Kumar (Vice President)]

ITA No.1945/Mum/2019
Assessment year: 2011-12

Smt. Dropati Bharat Godambe **Appellant**
*202, Lotus Building No. 12, Mhada,
Oshiwara, Andheri (W), Mumbai
[PAN:ADIPC8215G]*

Vs

Income Tax Officer – 11(1)(1) **Respondent**
Mumbai

Appearances by

Rajesh Shah *for the appellant*
Samatha Mullamudi *for the respondent*

Date of concluding the hearing: : June 06th, 2020
Date of pronouncement : July 09th, 2020

ORDER

Per Pramod Kumar, VP:

1. By way of this appeal, the assessee appellant has challenged correctness of the order dated 16th March 2017, passed by the CIT(A) for the assessment year 2011-12.
2. Grievances raised by the appellant are as follows:-

<i>1</i>	<i>Grounds of Appeal</i>	<i>Tax effect relating to each Ground of Appeal (see note below)</i>
<i>1</i>	<i>On facts and circumstances of the case and in law, the learned CIT(A) erred in passing an ex-parte order though the appellant has not received any notice in</i>	

	<i>respect of the appeal.</i>	
2	<i>On facts and circumstances of the case and in law, the A.O. ought to have allowed indexation on sale of premises which was purchased on 24.10.2007 though the appellant had wrongly claimed without indexation but at 10% of tax rate. The ought to have allowed indexation on the sale of premises and taxed at 20% of the net sale price of Rs.2275000.</i>	1,38,052
3	<i>On facts and circumstances of the case and in law, the learned CIT(A) erred in not allowing deduction under the head Capital Gain u/s.54F of the act of Rs.915963 though the amount was invested in purchase of property and the appellant was not having more than two residential premises.</i>	1,88,687
4	<i>On facts and circumstances of the case and in law, the learned CIT(A) erred in not allowing proportionate share of liaison charges of Rs. 25000 from out of capital gain.</i>	5,150
5	<i>On facts and circumstances of the case and in law, the learned CIT(A) erred in adding net income from House Property of Lotus Building of Rs. 16800 though the same was used for the purpose of the Proprietary Business of the appellant.</i>	5,346
6	<i>The appellant craves leave to add, amend, modify, substitute and/or cancel any of the grounds of appeal.</i>	
<i>Total tax effect (see note below)</i>		3,37,235

3. When this appeal was taken up for the hearing, it was noticed that the learned CIT(A) has summarily dismissed the matter ex parte by observing as follows:-

2. It has been held by Hon'ble Supreme Court in the case of B.N. Bhattachargee & Others in 118 ITR 461 (SC) that appeal does not mean only filing of memo, but also pursuing it effectively, in case where the assessee does not want to pursue the appeal, appellate authority have inherent right to dismiss the appeal for non prosecution. As also held by the Hon'ble Bombay High Court in the case of M/s. Chempol vs. Union of India in excise appeal No.62 of 2009 and further by Hon'ble

ITAT in the cases of Jawaharnagar Company-op. Hsg. Soc, Ltd. vs. ITO 24(3)(4) Hon'ble ITAT No.4666/Mum/2010 order dated 26.07.2011 and M/s. Flat Coaters (I) Ltd. vs. ITO 10(3)(4) in Hon'ble ITAT No.863/Mum/201Q order dated 27.07.2011, the appeal deserves dismissal for want of prosecution.

4. Learned CIT(A) did not deal with the facts as set out in the statement of facts filed before him, or with the grounds of appeal before him. It is only elementary that irrespective of whether someone appears before him to plead for the appeal, an appeal is to be decided on merits in the light of material on record. Obviously, that exercise is not carried out in the impugned order.

5. Explaining the position as learned Departmental Representative was asked whether he has any objection to the matter being set aside to the file of the CIT(A) for adjudication de nova, after giving yet another opportunity of hearing to the assessee, and in the light of, inter alia, material on record. Learned Departmental Representative graciously leaves the matter to the bench.

6. In view of the above discussions, I deem it fit and proper to remit the matter to the file of the CIT(A) for adjudication with direction as above. Ordered, accordingly.

7. In the result, the appeal is allowed for statistical purposes, in the terms indicated above. Order pronounced under rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1962, by placing the details on the notice board.

Sd/-
Pramod Kumar
(Vice President)

Mumbai, dated the 09th day of July, 2020

Nishant Verma Sr.PS

Copies to:

<i>(1)</i>	<i>The appellant</i>	<i>(2)</i>	<i>The respondent</i>
<i>(3)</i>	<i>CIT</i>	<i>(4)</i>	<i>CIT(A)</i>
<i>(5)</i>	<i>DR</i>	<i>(6)</i>	<i>Guard File</i>

By order

Assistant Registrar
Income Tax Appellate Tribunal
Mumbai benches, Mumbai

