

आयकर अपीलीय अधिकरण "SMC-II" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC-II" BENCH, MUMBAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मंजूनाथ जी, लेखा सदस्य के समक्ष ।
BEFORE SRI MAHAVIR SINGH, VP AND SRI MANJUNATHA G, AM

आयकर अपील सं./ ITA No. 1891/Mum/2019

(निर्धारण वर्ष / Assessment Years 2010-11)

Shri Harihara Hariharan Iyer 301/ 302, 3 rd floor, Tinnity CHS Plot NO.67, Sector-16A, Nerul Navi Mumbai-400 706	बनाम/ Vs.	The Dy. Commissioner of Income Tax, Ward 15(1)(1), Room No. 470, 4 th Floor, Aayakar Bhavan, M.K. Road, Mumbai-400 020
(अपीलार्थी / Appellant)		(प्रत्यर्थी/ Respondent)
स्थायी लेखा सं./PAN No. AAAP11068A		

अपीलार्थी की ओर से/ Appellant by	:	None
प्रत्यर्थी की ओर से/ Respondent by	:	Shri Akhtar Ansari, DR

सुनवाई की तारीख / Date of hearing:	16.06.2020
घोषणा की तारीख / Date of pronouncement:	16.06.2020

आदेश / ORDER

मंजूनाथ जी, लेखा सदस्य/

PER MANJUNATHA G, AM:

This appeal filed by the assessee is directed against the order of Ld. Commissioner of Income Tax(Appeals)-24 [in short CIT(A)], Mumbai dated 29.11.2018 and it pertains to Assessment Year 2010-11.

2. The assessee has raised the following grounds of appeal: -



"1. The Hon. CIT(A) ought to have appreciated the fact that the Appellant could not present the mater due to circumstances beyond his control.

2. The Hon' CIT(A) was not justified confirming the action of `2,47,044/- made by the Ld. Assessing Officer without appreciating the facts and circumstances of the case.

3. The Hon. CIT(A) and the Ld. Assessing Officer failed to appreciate the fact that no further tax was payable by the appellant even after considering the said Income as per the Computation of Income filed before the Id. Assessing Officer and statement of facts filed before the Hon. CIT(A).

4. The Hon. CIT(A) and the Ld. Assessing Officer erred in assuming and presuming that there was escapement of Income.."

3. The Brief facts of the case are that the assessment has been reopened under section 147 of the Act, by issuing notice under section 148 dated 31.03.2017 on the ground that income chargeable to tax has escaped assessment in lieu of non disclosure of receipts as appeared in Form 26AS. The case has been selected for scrutiny and the assessment has been completed under section 143(3) read with section 147 of the Income Tax Act, 1961 on 11.12.2017, determining the total income at ₹27,00,400/- by making addition towards gross



receipts of ₹2,47,044/- as per AIR information. The assessee carried the matter in appeal before the first appellate authority. Further, the assessee neither appeared before the learned CIT(A) nor filed any details to justify his case. Therefore, the Ld. CIT(A) has disposed off the appeal filed by the assessee as ex-parte for non-prosecution and confirmed the addition made by Assessing Officer towards addition on account of contract receipts of amounting to ₹2,47,044/-. Aggrieved by the order of CIT(A), assessee is in appeal before us.

4. None appeared for the assessee. We have heard the learned Departmental Representative and perused the materials available on record including the order of the learned CIT(A). We find that the learned CIT(A) has dismissed appeal filed by the assessee ex-parte for non-prosecution, but failed to decide the issue on merit in respect of issues challenged in appeal. No doubt, it is the responsibility of the person who files appeal to go to the appellate authorities and file necessary evidences for speedy disposal of appeal. When the appellant did not appear before the authority as and when the appeal is called for hearing, the appellate authority is left with no option but to dispose off, appeal on the basis of materials available on record. However, such appeal should be decided on merits. In this case, on perusal the order passed by the learned CIT(A), we find that the CIT(A) has disposed off the appeal filed by the assessee for non prosecution without discussing the issues challenged in appeal on merit. Therefore, we are of the considered view that the appeal needs to be set aside to the file of the learned



CIT(A) to decide the issue involved in appeal on merits. Hence, we set aside the appeal to the learned CIT(A) and direct him to reconsider the issue in accordance with law after affording adequate opportunity to the assessee. Needless to say, the assessee shall go before the learned CIT(A) and file necessary evidences to justify his case. In case, the assessee fails to appear before the learned CIT(A), then CIT(A) is free to take decision in accordance with law.

5. In the Result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 16.06.2020.

Sd/-
(हावीर सिंह /MAHAVIR SINGH)
(पाध्यक्ष / VICE PRESIDENT)

Sd/-
(मंजूनाथ जी/ MANJUNATHA G)
(खा सदस्य / ACCOUNTANT MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 16.06.2020

सुदीप सरकार, व. निजी सचिव/ *Sudip Sarkar, Sr.PS*

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार
(Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**