

आयकर अपीलीय अधिकरण "D" न्यायपीठ मुंबई में।

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

श्री महावीर सिंह, उपाध्यक्ष एवं श्री एस रिफौर रहमान, लेखा सदस्य के समक्ष ।

BEFORE SRI MAHAVIR SINGH, VP AND SRI S RIFAUR RAHMAN, AM

आयकर अपील सं./ ITA No. 3981/Mum/2019

(निर्धारण वर्ष / Assessment Year 2012-13)

M/s Regal Shipping and Marine Services Pvt. Ltd. 711, 7 th Floor, Vidyan Commercial premises, sector-11, Plot no.1, CBD Belapur, Navi Mumbai-400 614	बनाम/ Vs.	The DCIT Circle-15(3)(1), Mumbai
(अपीलार्थी / Appellant)		(प्रत्यर्थी/ Respondent)
स्थायी लेखा सं./PAN No. AACCR8006Q		

अपीलार्थी की ओर से/ Appellant by	:	None
प्रत्यर्थी की ओर से/ Respondent by	:	Shri Vidhyadhar V, DR

सुनवाई की तारीख / Date of hearing:	17.03.2021
घोषणा की तारीख / Date of pronouncement:	17.03.2021

आदेश / ORDER

महावीर सिंह, उपाध्यक्ष के द्वारा /

PER MAHAVIR SINGH, VP:

This appeal of assessee is arising out of the order of the Commissioner of Income Tax (Appeals)-24, Mumbai, [in short CIT(A)], in ITA No. CIT(A)-24/DCIT-15(3)(1)/IT-264/2015-16 dated 20.03.2017. The assessment was framed by the Dy. Commissioner of Income Tax, Circle 15(3)(1), Mumbai (in short DCIT/ AO), for the A.Y. 2012-13 vide

order dated 27.03.2015 under section 144 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act').

2. The first issue in this appeal of the assessee is against the order of CIT(A) passing ex-parte order in gross violation of Principles of natural justice. For this assessee has raised the following ground No.1:-

"1. Impugned order passed exparte by the CIT(A) is bad in law.

The impugned Order passed by the Ld. Commissioner of Income Tax (Appeals). (Ld. CIT(A)) has been passed in gross violation of principles of natural justice, equity, fair play and good conscience. The impugned order has been passed ex-parte. Be that as it may, non-appearance cannot be reason for condirmation of demand. The Ld. Commissioner of Income Tax (appeals) was in duty bound to give findings on the merits of the case. See: Nikhil Ghosh vs. Income Tax Officer (Appeal No.ITA No. 683/Kol/2016) and Ajay Sharma Vs. DCIT, (ITA Nos. 3654/Del/2016). Hence, on the above count alone, the impugned order is liable to be set aside."

3. At the outset, it is noticed from the order of CIT(A) that the CIT(A) has dismissed the appellate order without dealing the issue on merits. The CIT(A) has just relied on the decision of Delhi Tribunal in the case of



CIT Vs. Multiplan India (P) Ltd. (1991) 38 ITD 320 (Delhi) and dismissed the appeal.

4. When we noticed this, it seems that there is no adjudication on merits and once, there is no adjudication on merits, we are of the view that the CIT(A) has to decide this appeal and not to dismiss it for default on the part of the assessee or the learned counsel for the assessee does not appear. In other words, the CIT(A) has no jurisdiction to dismiss the appeal for default but he is bound to decide the appeal on merits even in the absence of the assessee. Once, the CIT(A) has not adjudicated the appeal on merits, we have no option except to remand the matter back to his file. Hence, we set aside the order of the CIT(A) and remand the matter back to his file for fresh adjudication. Needless to say that CIT(A) will allow reasonable opportunity of being heard to the assessee and assessee also, will present before him as and when call for hearing. This time, assessee is not free from latches. We set aside the order of the CIT(A) and direct him to decide the issue on merits after providing reasonable opportunity of being heard to the assessee.

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

Order pronounced in the open court on 17.03.2021.

Sd/-

(एस रिफ़ौर रहमान / S RIFAUR RAHMAN)

(लेखा सदस्य / ACCOUNTANT MEMBER)

Sd/-

(महावीर सिंह / MAHAVIR SINGH)

(उपाध्यक्ष / VICE PRESIDENT)

मुंबई, दिनांक/ Mumbai, Dated: 17.03.2021

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,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**