

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "SMC", MUMBAI**

BEFORE SHRI SAKTIJIT DEY (JM)

**ITA No. 1372/MUM/2019
Assessment Year: 2010-11**

DLH Kamla Developers, Ground Floor, Shanti Vimal, P.M. Road, Vile parle (East), Mumbai - 400057 PAN: AAHFD0790K	Vs.	Deputy Commissioner of Income Tax, Central Circle 3(4), 19 th Floor, Air India Building, Nariman Point, Mumbai - 400021
(Appellant)		(Respondent)

Assessee by : None

Revenue by : Shri Saurabh Kumar Rai (DR)

Date of Hearing : 27/05/2021

Date of Pronouncement: 09/07/2021

ORDER

This is an appeal by the assessee against order dated 24.12.2018 of learned Commissioner of Income Tax (Appeals)-51, Mumbai for the assessment year 2010-11.

2. When the appeal was called for hearing, none appeared on behalf of the assessee. However, considering the nature of dispute, I proceed to dispose of the appeal ex-parte qua the assessee after hearing the learned Departmental Representative and based on materials on record.

3. Briefly the facts are, the assessee is a partnership firm and is stated to be engaged in the business as builders, property developers and contractors. A search and seizure operation under section 132 of the Income Tax Act, 1961 was carried out in case of the assessee on 10.12.2013. As a result of such search and seizure operation proceedings under section 153A of the Act was initiated against the assessee. As observed by the Assessing Officer (AO), in response to notice issued under section 153A as well as section 142(1) of the Act, the assessee filed certain preliminary details in the office. However, the

assessee did not fully comply with the notice issued under section 142(1) of the Act. Therefore, the AO proceeded to complete the assessment under section 143(3) r.w.s 153A of the Act by disallowing professional fee of Rs. 10,00,000/-. Against the assessment order so passed the assessee preferred appeal before learned Commissioner (Appeals). However, assessee's appeal was dismissed.

4. I have heard the learned Departmental Representative and perused the material on record. Undisputedly, learned Commissioner (Appeals) has decided assessee's appeal ex-parte. It is further noticed from the impugned order of learned Commissioner (Appeals), the main person of the assessee group Shri Jitendra Jain, since, was in judicial/police custody proper compliance could not be made either before the AO or before learned Commissioner (Appeals). Thus, it is a fact that assessee's appeal before learned Commissioner (Appeals) went unrepresented and due to lack of proper representation, the addition made by the AO was sustained. Thus, in my considered opinion, in the interest of fair play and justice, assessee deserves one more opportunity to represent his case before learned Commissioner (Appeals). In view of the aforesaid, I set aside the impugned order of learned Commissioner (Appeals) and restore the issue back to his file for afresh adjudication after reasonable opportunity of being heard to the assessee. Grounds are allowed for statistical purposes.

5. In the result, appeal is allowed.

Order pronounced in the open court on 9th July, 2021.

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 09/07/2021

Alindra, PS

आदेश 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.
सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

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