

आयकर अपीलिय अधिकरण  
मुंबई पीठ "बी" , मुंबई  
श्री विकास अवस्थी, न्यायिक सदस्य एवं  
श्री एम बालागनेश, लेखा सदस्य के समक्ष  
IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "B", MUMBAI  
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER AND  
SHRI M. BALAGANESH, ACCOUNTANT MEMBER  
आ.अ.सं. 7829/मुं/2019 (नि.व.2014-15)  
ITA NO.7829/MUM/2019 (A.Y. 2014-15)

M/s Morya Grain Distilleries Pvt. Ltd.  
C/o Mehta Bharat & Associates,  
2, Motivilla CHS Ltd., Azad Road,  
Near Milan Subway, Vile Parle (E),  
Mumbai-400057.

**PAN: AAFCM2023D**

..... अपीलार्थी /Appellant

बनाम Vs.

ACIT- 15(2)(2),  
Room No. 357, 3<sup>rd</sup> Floor,  
Aayakar Bhavan,  
M.K. Road, Mumbai-400020.

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Sh. Kalpesh Turalkar

प्रतिवादी द्वारा/Respondent by : Sh. Tharian Oommen

सुनवाई की तिथि/ Date of hearing : 04/08/2021

घोषणा की तिथि/ Date of pronouncement : 30/08/2021

आदेश/ ORDER

**PER VIKAS AWASTHY, J.M:**

This appeal by the assessee is directed against the ex-parte order of Commissioner of Income Tax (Appeals)-24, Mumbai [hereinafter referred to as the 'CIT(A)'] dated 06.09.2019 for the Assessment Year (AY) 2014-15.

2. Sh. Kalpesh Turalkar appearing on behalf of the assessee submitted that the CIT(A) has dismissed the appeal for non-appearance. The assessee never

received the notice of hearing from the CIT(A). The assessee had given the address for service of notice in Form-35 filed before the CIT(A), the CIT(A) sent the notice of hearing on the old address of the assessee. The assessee had even intimated new address to the Assessing Officer (AO). In the assessment order, the AO has mentioned correct address of the assessee. The Id. Authorized Representative (AR) submitted that the assessee has prima facie good case in its favour. If the appeal is restored back to the file of CIT(A) for adjudication on merits, the assessee would be able to make out a case in its favour.

3. Sh. Tharian Oommen representing the Department fairly admitted that the appeal can be restored back to the file of CIT(A) for denovo adjudication on merits.

4. Both sides heard, orders of the authorities below examined. A perusal of impugned order shows that the CIT(A) in an ex-parte proceedings has dismissed the appeal of assessee for non-prosecution. The CIT(A) ostensibly sent notice to the assessee multiple times on the address available on ITBA portal instead of the address mentioned by the assessee in Form-35. Since, the assessee had shifted to the new address as mentioned in Form-35, the notices sent by the CIT(A) were never served on the assessee, hence, the assessee failed to respond to the notices from CIT(A). We further observe that the CIT(A) had sent notice through email on address different from the one mentioned in Form-35. Thus, there was apparent error on the part of CIT(A) in service of notice to the assessee.

The Tribunal has time and again held that the CIT(A) has no power to dismiss the appeal for non-prosecution or non-appearance. Once the appeal is filed before the CIT(A), the CIT(A) is duty bound to dispose of the appeal on merits after affording opportunity of hearing to the assessee.

5. Without commenting on merits of the issue raised in ground no. (ii) of the appeal, the appeal is restored to the CIT(A) for denovo adjudication after affording opportunity of hearing to the assessee, in accordance with law. The CIT(A) shall serve notice to the assessee on the address mentioned in Form-35. The assessee is directed to appear before the CIT(A) upon service of notice and co-operate in First Appellate proceedings.

6. In the result, impugned order is quashed and the appeal of assessee is allowed for statistical purpose in the terms aforesaid.

Order pronounced in the open court on **Monday**, the **30<sup>th</sup>** day of August, 2021.

Sd/-

(M. BALAGANESH)

लेखा सदस्य/ACCOUNTANT MEMBER

मुंबई/Mumbai, दिनांक/Dated: 30/08/2021

SK, PS

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

**प्रतिलिपि अग्रेषित Copy of the Order forwarded to :**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,  
Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)

**ITAT, Mumbai**