

आयकर अपीलीय अधिकरण "SMC" न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH, MUMBAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री राजेश कुमार, लेखा सदस्य के समक्ष ।
BEFORE SRI MAHAVIR SINGH, VP AND SRI RAJESH KUMAR, AM

आयकर अपील सं./ ITA No. 496/Mum/2020
(निर्धारण वर्ष / Assessment Years 2009-10)

Rameshkumar J Sakaria Matru Mandir Building, Nana Chowk, Opp. Bhatiya Hospital, Grant Road (W), Tardev, Mumbai-400 007	बनाम/ Vs.	The Income Tax Officer Ward-19(3)(1) Office No.223 Nath Nivas, 7 th Khetwadi Lane, Mumbai-400 004
(अपीलार्थी / Appellant)		(प्रत्यर्थी/ Respondent)
स्थायी लेखा सं./PAN No. ACUPJ3255E		

अपीलार्थी की ओर से/ Appellant by	:	Shri Rajesh Shah, AR
प्रत्यर्थी की ओर से/ Respondent by	:	Ms. Smita Verma, DR

सुनवाई की तारीख / Date of hearing:	23.08.2021
घोषणा की तारीख / Date of pronouncement:	17.09.2021

आदेश / ORDER

महावीर सिंह, उपाध्यक्ष के द्वारा /

PER MAHAVIR SINGH, VP:

This appeal of assessee is arising out of the order of Commissioner of Income Tax (Appeals)-30, Mumbai [in short CIT(A)], vide order dated 06.09.2019. The Assessment was framed by Income Tax Officer, Ward-19(3)(1) Mumbai (in short 'ITO/ AO') for the A.Y. 2009-10 vide order dated



23.02.2015 under section 143(3) of the Income Tax Act, 1961 (hereinafter 'the Act').

2. At the outset, it is noticed that this appeal is time barred by 7 days and assessee has filed condonation petition supported by affidavit. The learned Counsel for the assessee stated that the assessee received the order of CIT(A) on 16.11.2019 and last date for filing of this appeal before Tribunal was 15.01.2020, whereas, actually, the appeal was filed before the Tribunal on 21.01.2020. Thereby, there is a delay of 7 days. The learned Counsel for the assessee stated the reasons that he received the order on 16.11.2019 and handed over the same to his tax consultant, who was avoiding assessee and then, assessee approached to another tax consultant for filing the appeal before Tribunal and for this reason there is a delay of 7 days in filing of appeal before Tribunal. The learned Counsel for the assessee drew our attention to the affidavit filed by the assessee and the relevant clause 1 to 5 states the reason and the same read as under: -

"1. I am assessed to tax with Income Tax Officer 19(3)(1) Mumbai.

2. The appeal in respect of my assessment for the year 2009-10 is being filed with Income Tax Appellate Tribunal on 21.01.2020.



3. *Since the matter is in respect of my assessment I am fully aware of the facts of the case and I have made this affidavit knowing facts of the case.*

4. *The order for Assessment Year 2009-10 under section 250 of the Income Tax Act, 1961 dated 06.09.2019 was passed by Commissioner of Income Tax (Appeals)-30, Mumbai. The said order was received by me on 16.11.2019. Accordingly, I was required to file an appeal before the Honourable Income Tax appellate Tribunal within 60 days of the receipt of the order i.e. before 15/01/2020. However I could not filed the same on or before 15.01.2020. Therefore, there is delay in filing the appeal 7 days before Income Tax Appellate Tribunal.*

5. *I would like to submit as under:-*

a) *On receipt of the said order through speed post, I had handed over the papers to my tax consultant who was handling the case. However, the said tax consultant did not take any action since he was himself was at fault for non-attendance before the commissioner of Income Tax (appeals). I was inquiring regularly but he was dodging my query.*

b) *Meantime I approached another tax consultant somewhere on 15.01.2020 to look in to the matter.*

c) *I was informed by the tax consultant that nobody has attended before CIT(A) and the matter has been decided ex-parte. The last date of filing of an appeal was already over and the matter required urgent attention.*

d) *The new tax consultant immediately prepared the appeal and the appeal was filed on 21.01.2020.*

3) *As a result of the above, there is a delay of 7 days in filing the appeal*

f) *I would state that said delay was not deliberate. I state that due to reasonable cause the delay in filing of appeal may be condoned. The appellant request that he should not be subjected to punishment on account of fault of somebody. If the delay is not condoned there would be irreparable loss to me..”*

3. When, these reasons were confronted to the learned Sr. DR, he fairly conceded the position.

4. After hearing both the sides and going through the reasons that the reasons stated by the learned counsel for the assessee is sufficient and reasonable. Hence, we condone the delay and admit the appeal.

5. We have heard both the parties and perused the materials available on record. The learned Counsel for the assessee stated that



in the appeal the appellate order passed by the CIT(A) is ex-parte order and CIT(A) has not allowed reasonable opportunity of being heard to the assessee. Hence, Ld. Counsel requested that let the order of First Appellate Authority i.e., the order of CIT(A) be set aside and appeal be remanded back to his file for fresh adjudication.

6. When this was pointed out to Ld. Sr. Departmental Representative, he fairly conceded the position and could not controvert the above submissions.

7. After hearing both the sides, we noted that the order of CIT(A) is an ex-parte and no opportunity is being given to assessee to plead his case before him. Hence, we set aside the order of CIT(A) in both the years and remand the matter back to his file for fresh adjudication.

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

Order pronounced in the open court on 17.09.2021

Sd/-

(राजेश कुमार/ RAJESH KUMAR)

(लेखा सदस्य / ACCOUNTANT MEMBER)

Sd/-

(महावीर सिंह /MAHAVIR SINGH)

(उपाध्यक्ष / VICE PRESIDENT)

मुंबई, दिनांक/ Mumbai, Dated: 17.09.2021

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**