

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. 491/Mum/2020
(निर्धारण वर्ष / Assessment Years 2012-13)

| | | |
|---|--------------|--|
| Mahinder Freight Carriers Plot No. 124, Sector 19C Behind APMC Police Station Vashi, Navi Mumbai-400 705 | बनाम/ Vs. | The Dy. Commissioner of Tower No.6, Vashi Station Complex, Vashi, Navi Mumbai-400 703 |
| (अपीलार्थी / Appellant) | | (प्रत्यर्थी/ Respondent) |
| स्थायी लेखा सं./PAN No. AAEFM8779Q | | |

| | | |
|------------------------------------|---|---------------------|
| अपीलार्थी की ओर से/ Appellant by | : | None |
| 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)-26, Mumbai [in short CIT(A)], in Appeal No. CIT(A)-26/IT-10243/2015-16 vide order dated 11.10.2019. The Assessment was framed by Dy. Commissioner of Income Tax, Circle-28(2) Mumbai (in



short 'DCIT/ AO') for the A.Y. 2012-13 vide order dated 04.03.2015 under section 143(3) of the Income Tax Act, 1961 (hereinafter 'the Act').

2. 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.

3. 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