

आयकर अपीलीय अधिकरण “SMC” न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, MUMBAI

श्री महावीर सिंह, उपाध्यक्ष के समक्ष ।

BEFORE SRI MAHAVIR SINGH, VICE PRESIDENT

आयकर अपील सं./ ITA No. 2956/Mum/2018

(निर्धारण वर्ष / Assessment Year 2006-07)

Oracle Entertainment (P) Ltd. PL No. 184, Kaira Shopping Centre, Opp. Raghunath Vihar, Sector-13, Kharghar, New Mumbai- Mumbai-410610	Vs.	The Income Tax Officer Ward-1(4), Kalyan
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
स्थायी लेखा सं./PAN No. AAACO6741P		

अपीलार्थी की ओर से / Appellant by	:	None
प्रत्यर्थी की ओर से / Respondent by	:	Smt. Smita Verma, DR

सुनवाई की तारीख / Date of hearing:	29.09.2021
घोषणा की तारीख / Date of pronouncement :	29.09.2021

आदेश / ORDER

महावीर सिंह, उपाध्यक्ष के द्वारा /
PER MAHAVIR SINGH, VP:

This appeal of the assessee is arising out of order of the Commissioner of Income Tax (Appeals)-2, Thane [in short CIT(A)], in ITA No.072/12/13, vide dated 28.02.2018. The Assessment was framed by the Income Tax Officer, Ward 1(4), Mumbai (in short ITO/ AO) for the A.Y. 2006-07 vide order dated 31.12.2008 under section 143(3) of the Income-tax Act, 1961 (hereinafter 'the Act').

2. At the outset, it is noticed from the order of CIT(A) that the order of CIT(A) is an ex-parte order and assessee was provided opportunity of being heard but assessee could not avail due to the some reason or to the other. Now, none is



present from assessee's side from last so many hearings but request for adjournment was placed before me that assessee has appointed one counsel Mr. Pradeep Sharma and asked for adjournment for two months.

3. When a query was put to the leaned Sr. Departmental Representative that this is an a ex-parte order and ultimately, this has to go back because the CIT(A) appeal has passed an ex-parte order in violation of principle of natural justice, even the order passed by the Assessing Officer is also same that the assessee could not produced the loan creditors for examination. In this case one unique fact is that the Tribunal has given specific finding in earlier round as noted by CIT(A) in Para 5.2 as under: -

“5.2 The appellant also failed to produce credible documents, copies of original affidavits, confirmations, present status of loans, nature of loans and also failed to produce the creditors for establishing their identity, creditworthiness and genuineness of loan transactions, etc., in spite of giving several opportunities of being heard. In view of these facts, it is not possible for the undersigned to verify the genuineness of the same and comply with the directions of the Hon'ble ITAT. Considering the facts in entirety, in my considered view, the appellant has squarely failed to establish the genuineness of these creditors, therefore, entire addition of ₹67 lakhs, made by the AO and upheld by the then CIT(A) 1, Thane, by giving detailed findings in the appeal order, is hereby sustained and the above ground of appeal is dismissed.”



4. In term of the above, I am of the view that let one more opportunity be provided to assessee to substantiate its claim by filing necessary documents to prove the genuineness of the loan creditors. Hence, the matter is again restored back to the file of the CIT(A) for fresh adjudication.

5. This matter is restored back despite Revenue issued several opportunities and assessee was negligent. This setting aside is done subject to the payment of the cost of ₹5,000/-. This cost will be paid to Legal Aid Authority constituted by Hon'ble Bombay High Court and it is addressed in the premises of Hon'ble Bombay High Court. The assessee will pay this amount and will show the challan and payment receipt to the CIT(A), who after verifying the same will hear the appeal. This matter is remanded back to the file of the CIT(A).

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

Order pronounced in the open court on 29.09.2021.

Sd/-
(महावीर सिंह /MAHAVIR SINGH)
(उपाध्यक्ष / VICE PRESIDENT)

मुंबई, दिनांक/ Mumbai, Dated: 29.09.2021

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