

THE INCOME TAX APPELLATE TRIBUNAL
"SMC" Bench, Mumbai
Shri Shamim Yahya (AM)

I.T.A. No. 40/Mum/2021 (Assessment Year 2011-12)

Cynasure Infrastructure & Builders Private Limited B/105, Surya CHS Ltd. Parekh Nagar, Vaisheth Pada, Malad, Mumbai-97. PAN : AA ECC0340C (Appellant)	Vs.	ITO 12(1)(4) Aayakar Bhavan M.K. Road Mumbai-20. (Respondent)
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Assessee by	None
Department by	Ms. Smita Verma
Date of Hearing	11.10.2021
Date of Pronouncement	12.10.2021

ORDER

This appeal by the assessee is directed against the order of learned CIT(A) dated 10.10.2019 pertaining to assessment year (AY) 2011-12.

2. The grounds of appeal read as under :

I. DISMISSAL OF APPEAL MERELY ON HYPER TECHNICAL GROUND:-

1. Whether in the facts and circumstances of the case and in Law, the Ld CIT(Appeal) failed to appreciate that form 35 was duly signed by the Director as required by the law and failed to apply its mind to the facts of the case.

2. The Ld. CIT (A) has erred in dismissing the appeal summarily on technical ground and ought to have heard the matter on its merits.

3. The Learned CIT(A) failed to appreciate the fact that:

- a. Form 35 was duly signed by the Director.
- b. Section 140 required that a Director Sign the Form 35.

II. NOT DECIDING ALL THE GROUNDS RAISED ON MERITS OF THE MATTER

1. The Ld. Cit (A) has erred in dismissing the appeal without deciding all the grounds raised on merits of the matter by the Appellant.

2. The Ld. CIT (A) has erred in dismissing the appeal summarily on technical ground and ought to have heard the matter on its merits.

III. The appellant craves leave to add amend, alter or modify the ground or grounds of appeal before the hearing.

3. Brief facts of this case are that pursuant to assessment order, the assessee's appeal was dismissed by learned CIT(A) on the ground that form 35 was not verified by authorised person as under :-

“Therefore, the Form No. 35 was required to be verified by the Managing Director/Director of the appellant company. But in this case, the Form No. 35 has not been verified either by the Managing Director or Director. Accordingly, by this office letter dated 23.09.2019, issued through ITBA, the appellant was asked to show cause why the appeal should not be treated as defective and, therefore, dismissed. The appellant was required to submit its reply by 27.09.2019. However, till date no reply has been received from the appellant. Therefore, it is presumed that the appellant has nothing to say in this regard.”

4. Against this order assessee is in appeal before the ITAT. I have heard learned Departmental Representative and perused the record. From the above order learned CIT(A) is noted that learned CIT(A) has given only four days time to the assessee to cure the defect. Moreover, the order of learned CIT(A) is silent as to who has actually verified this Form No. 35. As against the above it is assessee's plea that it has actually been signed by the director. If the Form 35 has actually been signed by the director of the company, learned CIT(A) has erred in summarily dismissing the appeal without adjudicating upon the merits. Hence, in the interest of justice I remit the issue to the file of learned CIT(A) to consider the issue afresh in light of observations hereinabove.

5. In the result, assessee's appeal stands allowed for statistical purposes.

Pronounced in the open court on 12.10.2021.

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 12/10/2021

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent

3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

PS

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai