

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES "SMC", MUMBAI

Before Shri Mahavir Singh, Vice-President

ITA No.5370/Mum/2019  
Assessment Year : 2010-11

Sharookh G Irani, V J Choksi, & Co. LLP, 301, Jolly Bhavan No.2, New Marine Lines, Mumbai 400 020.  PAN : AAAP10993C  (Appellant)	Vs	ITO 17(3)(3), Mumbai      (Respondent)
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Appellant By : Shri Mehulle V Choksi  
Respondent By : Shri Vaibhav Jain

Date of Hearing :26.10.2021	Date of Pronouncement : 26.10.2021
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**ORDER**

This appeal by assessee is arising out of the order of the CIT(A) – 28, Mumbai, in appeal No.CIT(A)-28/ITBA-10906/ITO-17(3)(3)/2016-17, dated 23.05.2019. The assessment was framed by the ITO 17(3)(3), Mumbai, for A.Y. 2010-11, vide his order dated 27.12.2016, passed u/s. 143(3) r.w.s.147 of the Income tax Act, 1961 (hereinafter referred to as "the Act").

2. At the outset, the learned counsel for the assessee drew my attention to the first ground that the learned CIT(A) decided the appeal ex parte and without considering the submissions filed through e-filing portal with acknowledgment No. 22041911215167 and additional representations vide e-proceedings response

acknowledgment No.21051911266108, dated 22.04.2019 and 21.05.2019. For this assessee has raised the following ground:

*"On the facts and in the circumstances of the case and in law, the learned CIT(A) erred by incorrectly and improperly ignoring the submissions and documents filed by the appellant in support of appeal before the learned CIT(A)."*

The learned counsel for the assessee took me through the order of the CIT(A), which is an exparte and non-speaking order. The learned CIT(A) has recorded in para 4.3 as under:

*"4.3 Further as noted and discussed above, due to complete non-attendance on the part of the appellant, no submissions were filed and hence, none are on record. Moreover, the Statement of Facts (SOF), does not in any manner negate the observations and findings in the assessment order as to the estimation of ALV which is the subject matter of dispute. Therefore, the order of the AO and its findings remain uncontroverted in the present proceedings."*

When these facts were confronted to the learned senior DR, he fairly agreed that the matter can be restored to the file of the CIT(A) for adjudication afresh.

3. After hearing the contentions of both sides and going through the order of the CIT(A), which is practically exparte order and, even on merits, it is non-speaking order. The learned CIT(A) is duty bound, being a quasi-judicial authority, not to dismiss the appeal for default expressly or by inevitable implication, the appellate authority has to decide the appeal on merits and not to dismiss it for default. Hence, I set aside the order of the CIT(A) and restore the matter back to his file for adjudication afresh. Needless to say, the CIT(A) will allow reasonable opportunity of being heard to the assessee.

4. In the result, the appeal is allowed for statistical purposes.

Order pronounced in the open court on 26<sup>th</sup> October 2021.

**Sd/-**  
**(Mahavir Singh)**  
**VICE - PRESIDENT**

Mumbai, Dated : 26<sup>th</sup> October, 2021.  
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**Copy of the Order forwarded to :**

1. The Appellant.
2. The Respondent.
3. The CIT(A), Mumbai.
4. The CIT
5. The DR, 'SMC' Bench, ITAT, Mumbai

BY ORDER

//True Copy//

(Sr. Private Secretary/Assistant Registrar)  
Income Tax Appellate Tribunal, Mumbai