

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. 1221/Mum/2020
(निर्धारण वर्ष / Assessment Year 2009-10)

Darshan Shashikant Malkan 501, Purshottam, 21, J.P.Road, Andheri(W) Mumbai-400 058	Vs.	The Income Tax Officer Ward-24(1)(5) 939,,9 th Floor, C-41 to C-43 Kautilya Bhavan, G-Block, Bandra Kurla Complex, Pratyakshakar Bhavan, BKC, Bandra (E)-400 051
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
स्थायी लेखा सं. / PAN No. AFZPM6778B		

अपीलार्थी की ओर से / Appellant by	:	None
प्रत्यर्थी की ओर से / Respondent by	:	Shri Vivek Perampurna, DR

सुनवाई की तारीख / Date of hearing:	27.10.2021
घोषणा की तारीख / Date of pronouncement :	27.10.2021

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)]-36, Mumbai [in short CIT(A)], in appeal No. CIT(A)-36/IT-510/ITO-24(1)(5)/2016-17 vide dated 24.01.2020. The Assessment was framed by the Income Tax Officer, Ward-24(1)(5) Mumbai (in short ITO/ AO) for the A.Y. 2009-10 vide order dated 27.12.2016 under section 143(3) read with section 147 of the Income-tax Act, 1961 (hereinafter 'the Act').

2. The only issue in this appeal of assessee is against the order of Ld.CIT(A) in not considering the rectification application and not rectifying the mistake apparent



from the records in adjudicating one of the grounds. For this assessee has raised following ground.

“1.On the facts and circumstances of the case and in law, the C.I.T. (Appeals) has erred in not entertaining the rectification application dated 20th December, 2018 and 3rd January, 2020 seeking rectification of mistake apparent from record since inadvertently the third ground of appeal was omitted to be mentioned in the Grounds of Appeal although at the time of the hearing, written submissions were furnished where grounds of both the additions were challenged and arguments were addressed and Paper Book was also furnished showing the Ledger Account of the Appellant in the books of India Infoline Limited along with sample contract notes of the Appellant which was inadvertently not considered by the then Commissioner of Income Tax (Appeals) and the application for rectification of mistake was rejected by his successor in office on the alleged ground that the same was never submitted nor prayed for admission.”

3. The assessee moved rectification application against the order of Ld.CIT(A) in appeal No. CIT(A)-36/IT-510/ITO-24(1)(5)/2016-17,dated 24.09.2018 vide application letter dated 03/01/2020. In this application, the assessee stated that the decision on the third ground of the appeal, where an addition of Rs. 4,97,149/- made was not decided. The Ld.CIT(A) noted that attached grounds of appeal including third ground of appeal, which was never submitted nor prayed for admission during the appellant proceedings. According to Ld.CIT(A), there is no mistake apparent from the record in the order of Ld.CIT(A) as the assessee never prayed for admission of the third ground.

4. Now before me, none is present from assessee's side. From revenue Shri Vivek Perampurna, Ld. Sr.DR is present. I have gone through the paper book filed by the assessee, wherein written submissions dated 25.06.2018 is attached and the relevant issue raised is as regards to second addition was in the written submission, but Ld.CIT(A) has not adjudicated the



same. Even, the assessee before Ld.CIT(A) took this plea in rectification application dated 03.01.2020, but Ld.CIT(A) has not considered the same.

5. When, these facts were confronted to Ld. Sr.DR, he fairly stated that the matter can be restored back to the file of Ld.CIT(A) for adjudication of this ground. After hearing, Ld.Sr.DR and going through the facts, I feel that in the interest of justice, this issue needs adjudication. Hence, this issue is remanded back to the file of Ld.CIT(A), who will adjudicate the issue on merits. The appeal of the assessee is set aside and allowed for statistical purposes.

6. In the Result, the appeal of assessee is allowed for statistical purpose.

Order pronounced in the open court on 27 .10.2021.

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

मुंबई, दिनांक/ Mumbai, Dated: 27 .10.2021
Kasarla Thirumalesh, 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//



ITA No. 1221/Mum/2020
Darshan Shashikant Malkan AY 09-10

उप/सहायक पंजीकार (Asth. Registrar) / व. निजी सचिव
(Sr. PS)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai