

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. 4366/Mum/2019

(निर्धारण वर्ष / Assessment Year 2010-11)

Sanwalchand Udaychand Bafna A/12 Siddick Ibrahim Mansion DB Marg, Grant Road, Mumbai-400 007	Vs.	The Income Tax Officer, Ward 19(3)(2), Mumbai
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
स्थायी लेखा सं./PAN No. AEZPB7370P		

आयकर अपील सं./ ITA No. 4367/Mum/2019

(निर्धारण वर्ष / Assessment Year 2010-11)

Sanwalchand Udaychand Bafna (HUF) 7-a, 'b' Wingham, Siddick Ibrahim Mansion, DB Marg, Grant Road, Mumbai-400 007	Vs.	The Income Tax Officer, Ward 19(3)(2), Mumbai
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
स्थायी लेखा सं./PAN No. AASHS8612J		

अपीलार्थी की ओर से / Appellant by	:	None
प्रत्यर्थी की ओर से / Respondent by	:	Shri V.K. Chaturvedi, DR

सुनवाई की तारीख / Date of hearing:	07.10.2021
घोषणा की तारीख / Date of pronouncement :	07.10.2021

आदेश / ORDER

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

These two appeals of two different assessee are arising out of order of the Commissioner of Income Tax (Appeals)]-30, Mumbai [in short CIT(A)], in appeal Nos. CIT(A)-30/19(3)(2)/10665 & 10667/17-18 even date 04.04.2019. The Assessment was framed by the Income Tax Officer, Ward-



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19(3)(2) Mumbai (in short ITO/ AO) for the A.Y. 2010-11 even date 15.12.2017 under section 143(3) read with section 147 of the Income-tax Act, 1961 (hereinafter 'the Act').

2. The facts and circumstances are exactly identical in both the appeals of different assessee's, hence, I will take the facts from ITA No. 4367/Mum/2019 and will decide the issue.

3. At the outset, it is noticed from the order of the CIT(A) that CIT(A) has passed an *ex-parte* order and hearing of appeal was fixed first on 18.03.2019 and appellate order was passed on 04.04.2019. The disallowance has been confirmed by the CIT(A) on presumptions, assumptions, conjunctures and surmises and without allowing reasonable opportunity of being heard to assessee in violation of principles of natural justice.

4. When this was pointed out to Ld. Sr. Departmental Representative, Shri V.K. Chaturvedi, he fairly conceded the position and could not controvert the above submissions.

5. I 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



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this case, on perusal the order passed by the learned CIT(A), I 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, I am 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, I set aside the appeal to the learned CIT(A) and direct him to reconsider the issue in accordance with law after affording adequate opportunity of being heard to the assessee. Needless to say, the assessee shall go before the learned CIT(A) and file necessary evidences or documents 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.

6. As the facts and circumstances in ITA No. 4366/Mum/2019 are exactly identical to ITA NO. 4367/Mum/2019. Therefore, findings given by me in the impugned order in ITA No. 4367/Mum/2019 would mutatis mutandis apply to ITA No. 4366/Mum/2019 as well. Hence, this appeal of assessee is also allowed for statistical purposes.

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

Order pronounced in the open court on 07.10.2021.

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

मुंबई, दिनांक/ Mumbai, Dated: 07.10.2021

सुदीप सरकार, व.निजी सचिव / Sudip Sarkar, Sr.PS



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