

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. 359/Mum/2020

(निर्धारण वर्ष / Assessment Year 2016-17)

Pankaj J Mehta C-1105 Palm Beach Recidency Plot No. 24, to 29 Sec 4 Palm Beach Road Nerul W Navi Mumbai-400 706	Vs.	The Asst. Commissioner of Income Tax Aayakar Bhavan, M.K. Road, Mumbai-400 020
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
स्थायी लेखा सं./PAN No. ABBPM4741N		

अपीलार्थी की ओर से / Appellant by	:	Shri Kiran Kapadia; AR
प्रत्यर्थी की ओर से / Respondent by	:	Shri V.K. Chaturvedi, DR

सुनवाई की तारीख / Date of hearing:	04.10.2021
घोषणा की तारीख / Date of pronouncement :	04.10.2021

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)-7, Mumbai [in short CIT(A)], in appeal No. CIT(A)-7/IT-70/2018-19 vide dated 18.11.2019. The Assessment was framed by the Asst. Commissioner of Income Tax, Circle 16(3), Mumbai (in short ACIT/ ITO/ AO) for the A.Y. 2016-17 vide order dated 28.12.2018 under section 143(3) of the Income-tax Act, 1961 (hereinafter 'the Act').

2. At the outset, the learned Counsel for the assessee Mr. Kiran Kapadia stated that the order passed by CIT(A) is an ex-parte order and for this, assessee has raised the following ground NO.4 :-



“5. CIT(A) passed an ex-parte order without providing opportunity to the appellant to present his case and confirmed the assessed income as assessed by the AO.”

3. On the other hand, the learned Sr. Departmental Representative supported the orders of the lower authorities.

4. I have heard the rival contentions and gone through the facts and circumstances of the case. I noted that the order of CIT(A) has totally ex-parte and he noted this fact in Para 5 as under: -

“5.The assessee has been unable to prove that the premises in respect of which he had claimed depreciation under section 32 for Assessment Year 2016-17 was put to use before 31.03.2016. The assessee could not file electricity bills for the purpose of business. The assessee has not been able to rebut the inspector’s report which said that the said premises were under constructions even during the year when assessment proceedings were going on in Financial Year 2018-19. In the circumstances, I have no reason to take a view in the matter different from the one taken by the Assessing Officer and therefore, the addition of ₹12,25,860/- made by the Assessing Officer is confirmed. ”

5. Even in his finding it is noted that ‘I therefore, proceed to dispose off this appeal ex-parte on the basis of material on record.’”

6. From the above it is clear that the assessee was not provided reasonable opportunity of being heard by the CIT(A) and he could not file the necessary details. Hence, I set aside



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the order of CIT(A) and remand the matter back to his file for fresh adjudication. Needless to say, the CIT(A) will allow reasonable opportunity of being heard to the assessee. The order of CIT(A) is set aside and the appeal of assessee is allowed for statistical purposes.

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

Order pronounced in the open court on 04.10.2021.

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

मुंबई, दिनांक/ Mumbai, Dated: 04.10.2021

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