

आयकर अपीलीय अधिकरण  
मुंबई पीठ "एस एम सी", मुंबई  
श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष  
IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "SMC", MUMBAI  
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER  
आअसं. 1107/मुं/2020 (नि.व 2012-13)  
ITA NO.1107/MUM/2020(A.Y 2012-13)

M/s. Specific Engineering Corporation Private Limited,  
Plot No.R-494, TTC Industrial Area,  
MIDC Rabale, Navi Mumbai 400 701

PAN: AAKCS-7144-L

..... अपीलार्थी /Appellant

बनाम Vs.

Income Tax Officer – 15(3)(4),  
Room No.115 B, Ground Flr,  
Aaykar Bhavan, M.K.Road,  
Mumbai 400 020

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Vaibhav Bhajani

प्रतिवादी द्वारा/Respondent by : Ms. Smita Verma

सुनवाई की तिथि/ Date of hearing : 11/09/2021

घोषणा की तिथि/ Date of pronouncement : 03/12/2021

आदेश/ ORDER

This appeal by the assessee is directed against the order of Commissioner of Income Tax(Appeals)-24,Mumbai [ in short ' the CIT(A)'] dated 22/11/2019 for the Assessment Year 2012-13.

2. Shri Vaibhav Bhajani appearing on behalf of the assessee at the outset submitted that the impugned order was passed by the CIT(A) in an ex-parte proceedings. The Id. Authorized Representative for the assessee submitted that if an opportunity is granted to the assessee to present the case before the CIT(A), the assessee would be able to make out the case on merits and the entire addition would be deleted.

3. Per contra Ms. Smita Verma representing the Department submitted that the notice of hearing was given to the assessee but the assessee failed to appear before the CIT(A), hence, appeal of the assessee was dismissed by the CIT(A).

4. Both sides heard. A perusal of the impugned order reveals that the CIT(A) in an ex-parte proceedings has dismissed the appeal of assessee for non-prosecution. The CIT(A) is under statutory obligation to decide the appeal filed by the assessee on merits after granting fair opportunity of hearing, in accordance with law. The Hon'ble Bombay High Court in the case of CIT vs. Premkumar Arjundas Luthra(HUF), 240 Taxman 133 has held that once an appeal is filed u/s 246 of the Income Tax Act, 1961 [in short 'the Act'] neither it is open to the assessee to withdraw appeal, nor the CIT(A) can dismiss appeal on account of non-prosecution by the assessee. The CIT(A) is obliged to dispose of the appeal on merits. Ergo, the impugned order is quashed and appeal of the assessee is restored back to the file of CIT(A) for deciding the appeal on merits after affording reasonable opportunity of hearing to the assessee, in accordance with law. The assessee is directed to appear before the CIT(A) on service of notice and co-operate in the proceedings.

5. In the result, appeal by the assessee is allowed for statistical purposes in the aforesaid terms.

Order pronounced in the open Court on Friday the 3<sup>rd</sup> day of December, 2021

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated 03/12/2021  
Vm, Sr. PS (O/S)

**प्रतिलिपि अग्रेषितCopy of the Order forwarded to :**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**