

IN THE INCOME TAX APPELLATE TRIBUNAL  
“SMC” Bench, Mumbai  
Before Shri SHAMIM YAHYA, ACCOUNTANT MEMBER

I.T.A. No.431/Mum/2021  
(Assessment Year 2013-14)

Khakhu Enterprise Flat No.4, Irfan House 25, Dr.A.Nair Road Agri pada Mumbai-400 011  PAN : AAAPK2328M (Appellant)	Vs.	ITO-17(2)(1) Kautilya bhawan BKC, Bandra(E) Mumbai-400 051  (Respondent)
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Assessee by	Shri Ketan Vajani
Department by	Ms. Usha Shrote
Date of Hearing	06.04.2022
Date of Pronouncement	06 .04.2022

ORDER

Per Shamim Yahya (AM) :-

This appeal by the assessee is directed against the order of learned Commissioner of Income Tax (Appeals)-28, dated 03.08.2018 and pertains to assessment year 2013-14, wherein Id.CIT(A) has basically dismissed the appeal for non-prosecution.

2. Upon hearing both the counsel and perused the records. I find that it is incumbent upon the Id.CIT(A) to pass an order on the merits of the case and not dismiss the appeal for non-prosecution.

3. For this proposition, I place reliance upon following case laws.

- i. CIT vs. Premkumar Arjundas Luthra(HUF)(2017) 154 DTR (Bom) 302
- ii. CIT vs. S.Chenniappa Mudaliar(1969) 74 ITR 1 (SC)

4. In the present case apart from dismissing the appeal for non-prosecution, the ld.CIT(A) has reproduced the AOs observation and again drew adverse inference for nobody appeared in appeal. The order of ld.CIT(A) is at best a cryptic non speaking and non-reasoned order liable to be set aside.

5. Accordingly, in the interest of justice, I remit the issue raised in the appeal the file of the ld.CIT(A). Ld.CIT(A) is directed to consider the issue afresh and pass an order on the merits of the case after giving the assessee proper opportunity of being heard.

6. In the result, this appeal by the assessee stands allowed for statistical purposes.

Pronounced in the open court on 06 .04.2022.

Sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER

Mumbai; Dated : 06 /04/2022  
*Thirumalesh, Sr.PS*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai