

IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI RAHUL CHAUDHARY, JM

ITA No. 2164/Mum/2021

(Assessment Year 2012-13)

ITA No. 2165/Mum/2021

(Assessment Year 2013-14)

Syed Ershadahmed
Sanjay Apartment,
274, Bashabhai Com.
Bandra (W),
Mumbai-400 050
(Appellant)

Vs.

The Dy. Commissioner of
Income-Tax, 23(3)
1st Floor, Matru Mandir,
Mumbai-400 007

(Respondent)

PAN No. AABPB6912B

Assessee by : None

Revenue by : Shri Avanish Tiwari, DR

Date of hearing: 10.05.2022

Date of pronouncement : 12.05.2022

ORDER

PER PRASHANT MAHARISHI, AM:

01. These are the two appeals preferred by assessee/appellant for Assessment Years 2012-13 and 2013-14 against the order passed by the learned Commissioner of Income-tax (Appeals)-34, Mumbai [the learned CIT (A)] for Assessment Year 2012-13 on 29.10.2019 and order of even date for Assessment Year 2013-14.
02. Both the orders passed by the learned CIT (A) are ex-parte, dismissed the appeal filed by the assessee for non-

prosecution. Therefore, the assessee is aggrieved against those orders and has preferred these appeals.

03. We briefly state the facts of the case for Assessment Year 2012-13 and culled out from the assessment order. Assessee is an individual proprietor of Bombay Advertising Company engaged in the business of advertising filed return of income on 17.10.2012 at ₹63,91,940/-. The case of the assessee was picked up for scrutiny and interest of ₹93,75,943/- was disallowed to hold that assessee has used interest bearing funds for non business purposes. Accordingly, assessment order under section 143(3) of the income-tax Act, 1961 (the Act) was passed on 17.03.2015 determining the total income of the assessee at ₹1,57,67,880/-.
04. Assessee, aggrieved with that preferred the appeal before the learned CIT (A). During the course of hearing before him, he issued eight notices but none of them were attended to. Nor any reply was filed and therefore, the learned CIT (A) dismissed the appeal of the assessee for non-prosecution.
05. Similarly, for Assessment Year 2013-14, assessee filed his return of income on 05.10.2013 at ₹90,47,817/- which was assessed at ₹3,82,56,780/- vide assessment order dated 31.03.2016, wherein the interest disallowance was ₹2,92,08,908/-. The assessee preferred the appeal before the learned CIT (A) and same was dismissed for non-prosecution.

06. Even before us, the assessee did not remain present despite issue of notice. Therefore, the appeals are decided on the merits of the case as per statement of facts attached with appeal memo.
07. The learned Departmental Representative supported the orders of the lower authorities. The learned Departmental Representative submitted that when the assessee does not remain present on eight different occasions, the learned CIT (A) was justified in dismissing the appeal for non-prosecution.
08. We have carefully considered the contentions of the learned Departmental Representative and also the orders of the lower authorities. We find that the learned CIT (A) has dismissed the appeal on account of non-prosecution as on eight different dates the assessee did not turn up or filed any plea. We find that the issue has not been decided by the learned CIT (A) on the merits of the case. We do not find that according to the provisions of Section 251 of the Act, the learned CIT (A) has power to dismiss the appeal for non-prosecution. Before us, in elaborate statement of facts assessee has submitted that assessee has obtained loan from the bank which has become Non Performing Assets (NPA) and therefore, possession of the premises of the assessee were taken away by the bank and assessee did not have any staff and therefore, assessee remain unrepresented before the learned CIT (A). In view of the above facts, we set aside both the appeals to the file of the learned CIT (A) to decide the



issue on the merits of the case. The learned CIT (A) has power to confirm, reduce, enhance or annul the assessment order on its own merits. As the appeals are not decided on merits of the case, the learned CIT (A) is directed to dispose off these two appeals on merits after granting opportunity of hearing to assessee.

09. As the assessee has not appeared in appeal on eight different occasions before CIT (A) , now we direct the assessee to appear before the learned CIT (A) within 90 days from the date of this order and make his submissions . If the assessee does not make the above submission on its own within those 90 days, the learned CIT (A) may decide the appeal on merits.

010. In the result, both the appeals filed by the assessee are allowed with above directions

Order pronounced in the open court on 12.05.2022.

Sd/-
(RAHUL CHAUDHARY)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 12.05.2022

Sudip Sarkar, 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.

BY ORDER,

True Copy//



Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai