

**आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL "B"**  
**BENCH, PUNE**

**BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER**  
**AND DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER**

**आयकरअपीलसं. / ITA No.1567/PUN/2019**  
**निर्धारणवर्ष / Assessment Year : 2014-15**

Seema Rajesh Babar, Flat No.8, Bldg. No.A2, Near Tapodham, Warje, Pune – 411052. PAN: ATOPB 7345 L	Vs	The ITO, Ward-3(3), Pune.
Appellant/ Assessee		Respondent /Revenue

Assessee by	Shri Pratikh Sandhbhor – AR
Revenue by	Shri M.G.Jasnani – DR
Date of hearing	13/07/2022
Date of pronouncement	15/07/2022

**आदेश/ ORDER**

**PER DR. DIPAK P. RIPOTE, AM:**

This appeal filed by the Assessee is directed against the order of Id. Commissioner of Income Tax(Appeals)-3, Pune proceedings under section 271(1)(c) of the Act, for the A.Y. 2014-15 dated 07.06.2019.

2. Briefly stated, the facts of the case are that the assessee is engaged in the activity of installation of mobile towers. The assessee filed its return of income on 25.03.2015 declaring total income at Rs.19,49,317/- for the impugned year under consideration. During the assessment proceedings, the Assessing Officer(AO) noticed that the sales as per ITS Data was Rs.2,75,84,344/- whereas the sale as per profit and loss account was Rs.2,46,44,273/-. Despite

opportunity given to the assessee to file submission, the assessee failed to explain the difference in sales. Therefore, the AO made the addition of Rs.26,40,071/-. The AO further levied penalty of Rs.7,89,777/-.

3. Aggrieved by the order of AO, the assessee preferred an appeal before the Id.CIT(A). However, the Id.CIT(A) uphold the penalty levied by the Assessing Officer.

4. Aggrieved by the order of Id.CIT(A), the assessee has approached the Tribunal.

5. We have heard both the sides and perused the relevant material on record. On perusal of the order of the Id.CIT(A), it is an admitted position that the Id.CIT(A) has not decided the penalty issue on merits instead he dismissed the appeal on the ground of delay alone. Therefore, the assessee, in our view, should not be precluded an opportunity of hearing on merits, simply on account of delay alone. Our view is further strengthened by the decision of Amritsar Bench of the Tribunal in *Kashmir Road Lines Vs. DCIT (2021) 123 taxmann.com 5* where in it was held that even when the assessee is not interest in pursuing the appeal, even then, the Id.CIT(A) should dispose of the appeal of merits. In view of the aforementioned reasons, we set-aside the impugned order and remit the matter to the file of the Id.CIT(A) with a direction to dispose of the appeal afresh

on merits as per law after allowing a reasonable opportunity of hearing to the assessee.

6. In the result, the appeal is allowed for statistical purposes.

Order pronounced in the open Court on 15<sup>th</sup> July, 2022.

**Sd/-**  
**(S.S.GODARA)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(DR. DIPAK P. RIPOTE)**  
**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 15<sup>th</sup> July, 2022/ SGR\*

**आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,  
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary  
आयकरअपीलीयअधिकरण, पुणे/ITAT, Pune.