

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

BEFORE SHRI ABY T. VARKEY, JM AND SHRI S. RIFAUR RAHMAN, AM

आयकर अपील सं/ I.T.A. No.2121/Mum/2021

(निर्धारण वर्ष / Assessment Years: 2013-14)

M/s. Muktamani Distributors Pvt. Ltd. Room No.506, 5 th Floor, Gate No.1, Poddar Court, 18 Rabindra Sarani Dalhousie, Kolkata-700001, West Bengal.	बनाम/ Vs.	DCIT, Central Circle-8(4) 6 th Floor, Aayakar Bhavan, Mumbai-400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAECM5384J		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	None
Revenue by:	Shri S. H. Usmani (DR)

सुनवाई की तारीख / Date of Hearing: 20/09/2022

घोषणा की तारीख /Date of Pronouncement: 02/11/2022

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-50, Mumbai dated 17.09.2021 for the assessment year 2013-14.

2. At the outset, we note that none appeared for the assessee. However, the assessee has forwarded written submission dated 19.09.2022 which was placed before us. From the perusal of the same assessee had pleaded that the main grievance of the assessee against the action of the Ld. CIT(A) in not adjudicating additional ground of appeal namely viz. *“On the facts and in the circumstances of the case in law the assessment order passed u/s 153A r.w.s. 143(3) of the Act for the impugned assessment year is bad in law as there were no pending assessment proceedings as on the date of search action u/s*



ITA No.2121/Mum/2021

A.Y. 2013-14

M/s. Muktamani Distributors Pvt. Ltd.

132 of the Act and there is no nexus between the additions made to the returned income to that of incriminating material found/seized pursuant to search action". According to the written submissions given by the assessee, due to the oversight the assessee had withdrawn this ground during the First Appellate Proceedings. However, realizing the mistake the assessee promptly had requested the Ld. CIT(A) to adjudicate the aforesaid ground of appeal. However, the Ld. CIT(A) rejected the same by stating that the appellant has acted in a casual and callous manner. We do not countenance this approach/action of the Ld. CIT(A). The assessee based on mistaken belief has not initially pressed the aforesaid ground of appeal (supra) but realized its mistake and took back the plea well before Ld CIT(A) have adjudicated the appeal. However the Ld. CIT(A)'s insistence not to adjudicate the same cannot be accepted. We are of the opinion in such a scenario, the Ld. CIT(A) was bound by law to decide the grounds of appeal raised by the assessee as per the Section 250(6) of the Income Tax Act, 1961 (hereinafter "the Act") wherein the first appellate authority while disposing of appeal was duty bound to spell out points for determination and give in writing the reason for the decision on each points. It has to be kept in mind that if the assessee is aggrieved by the assessment order passed by the AO, he has a statutory right to appeal before the Ld. CIT(A); and the Ld. CIT(A) is bound by law to decide the appeal in accordance to law. If by mistake, the assessee has withdrawn the ground of appeal but before the appeal has been adjudicated/decided, the assessee has requested for restoration of the



ITA No.2121/Mum/2021

A.Y. 2013-14

M/s. Muktamani Distributors Pvt. Ltd.

ground of appeal he has withdraw/not pressed, the Ld. CIT(A) should have looked into the merits of the ground raised rather than simply shut the door of justice which does not behove well for quasi-judicial authority. Therefore, we set aside the impugned order of the Ld. CIT(A) and direct the Ld. CIT(A) to firstly decide the legal issue raised by the assessee as noted (supra). And thereafter, the ground no. 2 wherein the assessee has challenged the merits of the addition made by the AO u/s 153A/143(3) of the Act. With the aforesaid observation, we restore the appeal back to the file of the Ld. CIT(A) and direct the Ld. CIT(A) to pass a speaking order after hearing the assessee and while doing so, he has to take into consideration the judicial precedents on the issue in accordance to law. And the assessee is at liberty to file written submission, case laws etc to substantiate its grounds of appeal.

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

Order pronounced in the open court on this 02/11/2022.

Sd/-

(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-

(ABY T. VARKEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 02/11/2022.
Vijay Pal Singh, (Sr. PS)



ITA No.2121/Mum/2021

A.Y. 2013-14

M/s. Muktamani Distributors Pvt. Ltd.

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 / (Dy./Asstt. Registrar)
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