

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: G: NEW DELHI

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
AND
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

ITA No.6343/Del/2018
Assessment Year: 2009-10

Shashank Mittal, C-3/28-29, Sector-15, Rohini, New Delhi PAN AVOPM 9684 P	vs.	The DCIT, Central Circle-19, New Delhi
(Appellant)		(Respondent)

For Assessee :	None
Revenue For :	Shri Anuj Garg, Sr. DR

Date of Hearing :	08.06.2023
Date of Pronouncement :	08.06.2023

ORDER

PER CHANDRA MOHAN GARG, J.M.

This appeal has been filed against the order of Id. CIT(A)-27, New Delhi dated 14.12.2016 for AY 2009-10.

2. When the appeal was called for hearing neither the assessee nor any authorized representative appeared nor any adjournment application has been filed despite several notices. However, on perusal of the appeal records and impugned order, we find that the appeal can be disposed of ex-parte qua assessee after hearing the arguments of Id. Senior DR. Therefore we proceed to adjudicate the appeal ex-parte qua assessee.

3. From ground no. 1 of assessee as per Form no. 36 it has been alleged that the Id. CIT(A) has dismissed the first appeal simply on account of non prosecution by the appellant without appreciating that the Hon'ble Bombay High in the case of CIT Central, Nagpur vs. Prem Kumar Arjun Dass Lutra(HUF) reported as [2016] 69 taxman.com 407 (Bom.) has held that the law does not empower the Id. CIT(A) to dismiss the appeal for non prosecution.

4. The learned Senior DR, in all fairness, submitted that the Id. CIT(A) has dismissed appeal of assessee on account of non prosecution without adjudicating the grounds raised in form no. 35. He further submitted that the Department has no serious

objection if the matter is restored to the file of Id. CIT(A) for adjudication of appeal a fresh.

5. On careful consideration of above, we are of the view that the Id. CIT(A) was not correct and justified in dismissing the appeal of assessee on account of non-prosecution without adjudicating the grounds raised in form no. 35 as per requirement of sub section 6 of section 250 of the Act and proposition rendered by Hon'ble High Court of Bombay in the case of CIT Central, Nagpur vs. Prem Kumar Arjun Dass Lutra(HUF) (supra). Therefore the matter is restored to the file of Id. CIT(A) to the first appellate stage with the direction that the learned First Appellate Authority would adjudicate the first appeal after allowing due opportunity of hearing to the assessee and without being influence with the earlier order.

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

Order pronounced in the open court on 08.06.2023.

Sd/-

(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER
Dated: 08th June, 2023.

Sd/-

(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

NV/-

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

// By Order //

Asstt. Registrar, ITAT, New Delhi