

आयकर अपीलिय अधिकरण
मुंबई पीठ "सी", मुंबई
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री प्रशांत महर्षि, लेखाकार सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH " C ", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI PRASHANT MAHARSHI, ACCOUNTANT MEMBER

आसं. 2425/मुं/2023 (नि.व. 2016-17)
ITA NO.2425/MUM/2023(A.Y.2016-17)

Mr.Paresh Valia,
B-1503 Pusph Vinod,S.v.Road,
Borivali (West), Mumbai 400 092.
PAN: AABPV-4733-A

..... अपीलार्थी/ Appellant

बनाम Vs.

Dy. Commissioner of Income Tax -42(1)(1), Mumbai,
Kautaliya Bhavan, Bandra Kurla Complex,
Mumbai – 400 051.

..... प्रतिवादी/ Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Poojan Mehta
प्रतिवादी द्वारा/ Respondent by : Shri Prabhat Kumar Gupta
सुनवाई की तिथि/ Date of hearing : 19/10/2023
घोषणा की तिथि/ Date of pronouncement : 19/10/2023

आदेश/ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against an ex-parte order passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi[in short 'the CIT(A)'] dated 12/05/2023, for the Assessment Year 2016-17.

2. Shri Poojan Mehta appearing on behalf of the assessee submitted that the CIT(A) in an ex-parte proceedings has dismissed the appeal of assessee for non-prosecution.

3. Shri Prabhat Kumar Gupta representing the Department supporting the impugned order stated that sufficient opportunity was given to the assessee by CIT(A). The assessee failed to comply with the notice of hearing on all the occasions. He pointed that the CIT(A) has also considered the merits of the addition and has dismissed the appeal on merits as well. The Id. Departmental Representative prayed for dismissing the appeal of assessee.

4. Both sides heard, orders of authorities below examined. A perusal of the impugned order shows that the CIT(A) had issued notice of hearing to the assessee on four occasions. On all the four dates, the assessee failed to respond to the notices. Finally, the CIT(A) dismissed the appeal for non-prosecution. It is a well settled legal position that the CIT(A) has no power to dismiss the appeal of assessee for want of prosecution. The provisions of section 250 r.w.r. 251 of the Income Tax Act, 1961 [in short 'the Act'] mandates that the CIT(A) has to dispose of the appeal on merits by passing a reasoned order. The Hon'ble Jurisdictional High Court in the case of CIT(Central), Nagpur vs. Prem Kumar Arjundas Luthra (HUF), 69 taxmann.com 407 has held that Commissioner of Income Tax (Appeals) cannot dismiss the appeal on account of non-prosecution. In view of the above, impugned order is quashed and the appeal is restored to the CIT(A) for fresh adjudication on merits after affording reasonable opportunity to the assessee/appellant to make submissions, in accordance with law.

5. The assessee is directed to comply with the notice(s) served by the CIT(A), without fail.

6. In the result, appeal by the assessee is allowed for statistical purpose.
Order pronounced in the open court on Thursday the 19th day of October,
2023.

Sd/-

(PRASHANT MAHARSHI)

लेखाकार सदस्य / ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/ Dated 19/10/2023

Vm, Sr. PS(O/S)

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य / JUDICIAL MEMBER

प्रतिलिपि अग्रेषित Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant ,
2. प्रतिवादी / The Respondent.
3. The PCIT
4. विभागीय प्रतिनिधि, आय .अपी .अधि . , मुंबई / DR, ITAT, Mumbai
5. गार्ड फाइल / Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar) ITAT, Mumbai