

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

**SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER  
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 2946/MUM/2023  
(Assessment Year: 2018-19)**

**Sana Hospitality Services  
Private Limited,**  
R-701 & R 701 Part,  
TTC Industrial Area, MIDC,  
Rabale, Navi Mumbai - 400701  
[PAN: AALCS2975E]

..... **Appellant**

**Deputy Commissioner of Income Tax,  
Central Circle – 3(4), Mumbai,**  
1915, 19<sup>th</sup> Floor, Air India Building,  
Nariman Point, Mumbai

Vs

..... **Respondent**

**Appearance**

For the Appellant/Assessee : Shri K. Shivaram  
For the Respondent/Department : Shri Prashant Mahajan

**Date**

Conclusion of hearing : 14.12.2023  
Pronouncement of order : 21.12.2023

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**ORDER**

**Per Rahul Chaudhary, Judicial Member:**

1. By way of the present appeal the Assessee has challenged the order, dated 07/07/2023, passed by the Ld. Commissioner of Income Tax (Appeals)-51, Mumbai [hereinafter referred to as 'the CIT(A)'] for the Assessment Year 2018-19, whereby the Ld. CIT(A) had dismissed the appeal of the Assessee against the Assessment Order, dated 24/05/2021, passed under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').
2. The Appellant has raised following grounds of appeal:

1. *The Ld. CIT (Appeals) erred in law and on facts in dismissing the appeal.*
  2. *The Ld. CIT (Appeals) erred in law and is not justified in not giving proper opportunity.*
  3. *The Ld. CIT (Appeals) erred in law and is not justified in confirming the additions of Rs.1,05,05,186/- u/s. 56(2)(x) made by the assessing officer for Property purchased in 2013 without appreciating the fact that section 56(2)(x) is applicable on or after 1 Day of April 2017.*
  4. *The Ld. CIT (Appeals) erred in law and is not justified in confirming the additions of Rs. 1,05,05,186/- u/s. 56(2)(x) made by the assessing officer for Property purchased in 2013 without considering the Valuation Report received from DVO.*
  5. *The Ld. DVO erred in determining the fair market value of the Property as on 01.01.2014 without considering the fact that First payment for purchase of property has been made on 12th November 2013 & 21 November 2013.*
  6. *The appellant prays that*
    - a. *Addition of Rs. 1,05,05,186/- on account of difference in purchase consideration and stamp duty value u/s. 56(2)(x).*
    - b. *The Appellant plead before Honorable ITAT to add, alter or amend any or all grounds of appeal before or at the time of hearing”.*
3. The rival contentions heard and record perused.
4. The Appellant filed its return of income for the Assessment Year 2018-19 on 31/01/2019 declaring total income of INR 1,52,18,990/. The case of the Appellant was selected for scrutiny and assessment was framed on the Appellant vide assessment order, dated 24/05/2021, passed under Section 143(3) of the Act at assessed income of INR 2,57,24,176/- after making addition of INR 1,05,05,186/- under Section 56(2)(x) of the Act.
5. Being aggrieved, the Appellant preferred appeal before CIT(A)

against the Assessment Order, dated 24/05/2021, which was dismissed by the CIT(A) vide order, dated 07/07/2023, on account of non-prosecution.

6. The Appellant has preferred the present appeal before the Tribunal challenging the above dismissal order passed by the CIT(A).
7. The Ld. Authorised Representative for the Appellant appearing before us submitted that the CIT(A) erred in dismissing the appeal without examining the merits and without granting the Appellant sufficient opportunity of being heard. Per contra, the Ld. Departmental Representative submitted that sufficient opportunity of being heard to the Appellant and therefore, the CIT(A) was justified in dismissing the appeal.
8. On perusal of the record, we found that the Appellant failed to comply with the notices fixing the date of hearing. Therefore, the Appellant was proceeded ex-parte. However, the CIT(A) dismissed the appeal observing that the Appellant was not serious in pursuing the appeal, and therefore, the appeal was dismissed on the ground of 'lack of prosecution'. We note that in the case of Commissioner of Income Tax (Central), Nagpur Vs. Premkumar Arjundas Luthra (HUF): [2016] 240 Taxman 133 (Bombay)/[2017] 297 CTR 614 (Bombay)[25-04-2016], it has been held by the Hon'ble Bombay High Court that the provisions of the Act do not empower the CIT(A) to dismiss the appeal preferred by an assessee on account of non-prosecution. Accordingly, the CIT(A) was required to dispose of the appeal on merits rather than dismiss the same on account of non-prosecution. Therefore, we set aside the order, dated 07/07/2023, passed by the CIT(A) and restore the appeal to the file of the CIT(A) with the direction to decide the appeal on merits as per law after

granting the Appellant reasonable opportunity of being heard. The Appellant has directed to cooperate in the appellate proceedings and not seek unnecessary adjournment. Further, the Appellant is also directed to file all the relevant submissions/documents/details on which the Appellant wishes to place reliance before the CIT(A) forthwith on receiving notice of hearing.

9. In terms of the above, Ground No. 1 raised by the Appellant is allowed for statistical purposes whereas all the other grounds raised by the Appellant are dismissed as being infructuous.
10. In result, the present appeal preferred by the Assessee is allowed for statistical purposes.

Order pronounced on 21.12.2023.

**Sd/-**  
**(Prashant Maharishi)**  
**Accountant Member**

**Sd/-**  
**(Rahul Chaudhary)**  
**Judicial Member**

मुंबई Mumbai; दिनांक Dated : 21.12.2023  
Alindra, PS

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.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)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai