

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

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER  
AND**

**SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER**

**ITA No.3930/MUM/2023**

**(Assessment Year: 2012-13)**

**ITA No. 3931/MUM/2023**

**(Assessment Year: 2017-18)**

Sagar Shopping Developers Sagar Avenue 2, Opp J. N. Road, Near Vakola Bridge, Santacruz, East Mumbai 400055.	Vs.	Assistant Commissioner of Income Tax Piramal Chambers, DR SS Rao Marg, Parel, Mumbai 400012.
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by : None  
Revenue by : Shri Prashant Mahajan, Sr. A.R.

Date of hearing : 15 .04 .2024

Date of pronouncement : 30 .04 .2024

**ORDER**

**Per: Ratnesh Nandan Sahay, Accountant Member:**

1. The assessee has filed two appeals- ITA No. 3930/MUM/2023 for Assessment Year 2012-13 and ITA No. 3931/MUM/2023 for Assessment Year 2017-18 u/s. 250 of the Income Tax Act. Since the issues involved in both the appeals are same, these are decided together.
2. The facts of the case are that the Appellant is a partnership firm and is engaged in the business of real estate development and construction. Assessments were made u/s. 143 (3) r.w.s 147 of the Income Tax Act by

the Assessing Officer on the ground that in the Tax Audit Report of the assessee firm, the Auditor had made a remark in column no 17(f) that the amount reduced from WIP was inadmissible u/s 40(a) of the Income Tax Act but the assessee did not reduce its WIP in the Balance Sheet which resulted into increase of WIP by substantial amount. The assessee also did not respond to the notices issued by the AO nor produced any evidence in this regard to substantiate its claim. The AO, therefore, disallowed these sums u/s 40(a) of the Income Tax Act and added to the total income of the assessee.

3. The assessee went into appeal before the Ld. CIT Appeal and despite given several opportunities of being heard to the assessee, it neither attended the appellate proceedings nor produced any documentary evidence to substantiate its claim and therefore the Ld. CIT Appeal by following the decision of Hon'ble Bombay High Court in M/s. Chemipol v. Union of India and Ors. in Central Excise Appeal No. 62 of 2009, the Hon'ble Supreme Court in CIT vs. Cheniappa Mudaliar, AIR 1969 SC 1068 and Sunderlal Mannalal Vs. Nandramdas Dwarkadas, dismissed the appeal of the assessee.
4. Here also, before us, the appellant neither produced any evidence nor participated in the appellate proceedings. Thus, we are not inclined to take a lenient view in this case and the matter is therefore remanded to Ld. CIT Appeal to decide the issue on merit after affording adequate opportunity to the assessee. The appellant is also directed to appear before the Ld. CIT Appeal and produce all relevant document/evidence before him so that the issue can be decided accordingly.
5. Accordingly, the appeal is partly allowed in aforesaid terms.

**Order pronounced in the open court on 30.04.2024.**



**Sd/-**  
**(NARENDER KUMAR CHOUDHRY)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(RATNESH NANDAN SAHAY)**  
**ACCOUNTANT MEMBER**

Mumbai, Dated: 30.04.2024

*Snehal C. Ayare, Stenographer*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

By Order,

Dy/Asstt. Registrar, ITAT, Mumbai.