

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

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI SUNIL KUMAR SINGH (JUDICIAL MEMBER)**

**ITA No. 2878/MUM/2024
Assessment Year: 2011-12**

Late Darayas Pardiwala (On his
behalf, Legal Heir Pearl Unwalla),
Yagnesh Desai & Co. S09,
Indiabulls Mega Mall, Jetalpur
Road, Akota,
Vadodara-390020.

PAN NO. ACVPP 5358 F
Appellant

Add. CIT, Circle 35(1),
C-12, BKC, Bandra East,
Mumbai-400051.

Vs.

Respondent

Assessee by : Mr. Yagnesh Deasi
Revenue by : Ms. Mahita Nair, Sr. DR

Date of Hearing : 29/07/2024
Date of pronouncement : 31/07/2024

ORDER

PER OM PRAKASH KANT, AM

This appeal by legal heir on behalf of the assessee is directed against order dated 22.03.2024 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment year 2011-12, raising following grounds:



- a. *Ld. CIT(A) NFAC has grossly erred in dismissing the Appeal just based on non-attendance of the Appellant.*
- b. *Ld. CIT(A) NFAC ought to have perused the contentions raised by the Appellant in the Statement of Facts and Grounds of Appeal and adjudicated the same on merits.*
- c. *Appellant therefore requests your Honor to kindly remand the Order to Ld. CIT (A) NFAC so as to enable the Appellant to attend the hearing with submissions on law as well as facts.*

2. At the outset, the Ld. counsel for the assessee submitted that this order has been passed ex-parte qua the assessee without providing sufficient opportunity of being heard and therefore, appeal may be restored back to the file of the Ld. CIT(A) for deciding afresh.

3. We have heard rival submission of the parties and perused the relevant material on record. The Ld. CIT(A) in para 2.1 has noted that he issued notice dated 30.12.2020 fixing the date of the hearing on 14.01.2021 but on said hearing, the assessee sought for adjournment. Further, Ld CIT(A) noted that the notice dated 23.01.2022 issued by him was also not responded. Thereafter, another notice was issued after almost two years i.e. on 25.01.2024, which was also not responded. In the circumstances, the Ld. CIT(A) dismissed the appeal of the assessee for default on the part of the assessee. In our opinion, the Ld. CIT(A) is required to pass the order on merit even in absence of any submission on the part of the assessee. Further, the Ld. counsel for the assessee before us submitted that the assessee demised on 07.02.2022 and his legal heir were aware of the proceedings, therefore, could not respond



before the Ld. CIT(A). Now the assessee is being represented by the legal heir and he is willing to file required submissions. In view of the above facts and circumstances of the case and in the interest of justice, we set aside the order of the Ld. CIT(A) and restore the matter back to him for deciding afresh after taking into consideration submission by the legal heir on record on behalf of the assessee. The grounds of appeal of the assessee are accordingly allowed for statistical purposes.

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

Order pronounced in the open Court on 31/07/2024.

**Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER**

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;
Dated: 31/07/2024
Rahul Sharma, Sr. P.S.

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,
(Assistant Registrar)
ITAT, Mumbai