

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'D' BENCH
MUMBAI**

**BEFORE: SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER
&
SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER**

**ITA No. 3083/MUM/2024
(Assessment Year : 2016-17)**

Maharashtra Small Scale Industries Development Corporation Ltd. 9, Krupanidhi, Walchand Hirachand Marg, Bellard Estate, Mumbai-400001.	Vs.	Assistant Commissioner of Income Tax-Range-2(2)(2) Aayakar Bhavan, M.K. Road, New Marine Lines, Mumbai-400020.
PAN/GIR No. AAACM3863A		
(Appellant)	..	(Respondent)

Assessee by	Ms. Dinkle Haria
Revenue by	Smt. Mahita Nair (Sr. DR)
Date of Hearing	06/08/2024
Date of Pronouncement	08/08/2024

आदेश / ORDER

PER SUNIL KUMAR SINGH (J.M):

1. This appeal has been preferred against the impugned order dated 12.04.2024 passed in Appeal no. CIT(A) 5, Mumbai/10295/2018-19 by the Ld. Commissioner of Income-tax(Appeals)/ National Faceless Appeal Centre (NFAC) [hereinafter referred to as the "CIT(A)"] u/s. 250 of the Income-tax Act, 1961 [hereinafter referred to as "Act"] for the

Assessment year [A.Y.] 2016-17, wherein learned CIT(A) has dismissed assessee's first appeal in default of assessee.

2. The brief facts under appeal state that the assessee e-filed return of income on 10.10.2016, declaring total income of Rs. 409,02,790/- for A.Y. 2016-17. Further the assessee revised its return on 28.03.2018, declaring total income of Rs. 6,23,45,290/-. The return was processed u/s. 143(1) of the Act. Subsequently, the case was selected for scrutiny under CASS and statutory notices u/s. 143(2) and 142(1) were issued and served upon the assessee. After considering the assessee's response, AO assessed total income at Rs. 6,37,32,368/- vide assessment order dated 25.12.2018. Aggrieved by the assessment order, assessee filed an appeal before learned CIT(A), who dismissed assessee's appeal in default of the assessee.
3. Assessee filed this appeal on the ground that learned CIT(A) has erred in dismissing assessee's appeal ex-parte without affording an opportunity of hearing resulting in confirmation of aforesaid addition made by AO.
4. In response to the notice issued by the tribunal, learned DR appeared and participated in the hearing.
5. We have perused the records and heard learned representatives for both the parties.
6. Learned AR has submitted that learned CIT(A) has erred in dismissing assessee's appeal in default in violation of the

principles of natural justice. Prayed to set aside impugned order.

7. Learned DR has submitted that assessee was provided sufficient opportunity of hearing by issuance of notices on four occasions by learned CIT(A) but for no avail. Learned DR has supported impugned order passed by the first appellate authority.
8. Perusal of the impugned order shows that the assessee did not respond to the notices issued by the first appellate authority on aforesaid occasions. Learned CIT(A) observed that the appellant assessee was not interested to file details during appellate proceedings. Hence, dismissed assessee's appeal in default of assessee.
9. Assessee has filed affidavit of Shri. Vijay D Kapate, General Manager of the appellant assessee during the dictation on 07.08.2024 through bench clerk, stating that due to inability of Counsel Adjournments were sought. Hence, the non appearance before learned CIT(A) was not deliberate.
10. We notice that learned CIT(A) was expected to state the points for determination, the decision there on and the reasons for the decision as provided u/s. 250(6) of the Act while passing order, even in absence of assessee. We are conscious of the fact, that assessee has not turned up before the first appellate authority in response to the notices issued on aforesaid different occasions. However, in the interest of justice and fair play, we deem it appropriate to remit the matter back to the file of learned CIT(A) for denovo

adjudication on merit. We further direct the assessee to be diligent and cooperative in attending the hearings and making submissions before the first appellate authority for the expeditious and effective disposal of the appeal. Assessee should refrain from seeking any adjournment but for compelling and unavoidable reasons. Needless to say that learned CIT(A) shall ensure the observance of the principles of natural justice. It is made clear that we have not made any observation on the merits of the case. The appeal is thus liable to be allowed.

11. In the result, the appeal is allowed. Impugned order dated 12.04.2024 is set aside. The case is restored back to the file of the learned CIT(A) for statistical purposes.

Order pronounced on 08.08.2024.

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai; Dated 08/08/2024
Anandi Nambi, *Steno*

Copy of the Order forwarded to:

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

//True Copy//

Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai