

IN THE INCOME TAX APPELLATE TRIBUNAL
"J (SMC)" BENCH, MUMBAI

BEFORE MS. PADMAVATHY S, ACCOUNTANT MEMBER AND
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no. 2958/Mum./2024
(Assessment Year : 2011-12)

Nayan Builders And Developers Pvt Ltd

Shamrock Bldg, Gala Mansion, 2nd Floor, 308,
S.K. Bhole Road, Opp. D' Silva High School,
Dadar (W), Mumbai- 400028
PAN-AAACN1198H

..... Appellant

v/s

Income Tax Officer - 7(2)(3)

Aayakar Bhavan,
Mumbai- 400020

..... Respondent

Assessee by : Shri A.S. Khairat

Revenue by : Shri Sridhar G. Menon, Sr. DR

Date of Hearing – 08/08/2024

Date of Order – 28/08/2024

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 27/03/2024 passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Addl./Joint Commissioner of Income Tax (Appeals)-4, Delhi [*"learned Addl./Joint CIT(A)"*], for the assessment year 2011-12.

2. In this appeal, the assessee has raised the following grounds:-

"1) Learned ADDL/JCIT(A)-4 DELHI has erred in decided ex-Parte order for Non prosecution. by Stating assessee has not interested in pursuing the appeal.

2) Learned ADDL/JCIT(A)-4 DELHI has erred in dismissed appeal without giving detailed reasons

3) 3) Learned ADDL/JCIT(A)-4 DELHI has erred in deprived appellant 's right and opportunity to submit reply on merit of case. Hence Has no power to dismiss an appeal on account of non prosecution.

4) 4) Appellant Assessee craves leave to add to and/or amend and/or delete and/or modify and/or alter aforesaid grounds of appeal as and when occasion demands.

5) All aforesaid grounds of appeals are independent, in the alternative and without prejudice to one another.”

3. We have considered the submissions and perused the material available on record. In the present case, at the outset, it is evident that the learned CIT(A) has passed the order ex-parte due to the non-appearance of/on behalf of the assessee. We further find that the learned CIT(A) merely on the basis of non-compliance with notices, dismissed the appeal filed by the assessee without adjudicating the grounds raised by the assessee on merits, as required under section 250(6) of the Act. We find that in CIT v/s Premkumar Arjundas Luthra (HUF), [2016] 69 taxmann.com 407 (Bombay), the Hon'ble Jurisdictional High Court held that Commissioner (Appeals) cannot dismiss the appeal on account of non-prosecution of appeal by the assessee. Consequently, we deem it fit and proper to set aside the impugned order and restore the matter to the file of the learned CIT(A) for adjudication of the appeal on merits. Since the appeal is restored to the file of the learned CIT(A) for consideration afresh, in the interest of justice the assessee be granted one more opportunity to represent its case on merits before the learned CIT(A). Thus, we direct that no order shall be passed without affording reasonable opportunity of hearing to the parties. Further, the assessee is directed to appear before the learned CIT(A) on all the

dates of hearing as may be fixed without any default. Accordingly, grounds raised by the assessee are allowed for statistical purposes.

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

Order pronounced in the open Court on 28/08/2024

**Sd/-
PADMAVATHY S
ACCOUNTANT MEMBER**

**Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER**

MUMBAI, DATED: 28/08/2024

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Mumbai; and
- (5) Guard file.

By Order

Shubham P. Lohar

Assistant Registrar
ITAT, Mumbai