

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

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)  
AND  
MS. KAVITHA RAJAGOPAL (JUDICIAL MEMBER)**

**ITA Nos. 4312 & 4309/MUM/2024  
Assessment Year: 2016-17**

Mehboob Amirali Kamdar,  
D/503, New Sai Mandir CHSL,  
S.V. Road, Dahisar (East),  
Mumbai-400068.

**PAN NO. AFQPK 3468 M  
Appellant**

ITO Ward 42(1)(3),  
Kautilya Bhavan,  
Mumbai-400051.

**Vs.**

**Respondent**

Assessee by : Mr. Rajesh Shah  
Revenue by : Mr. R.R. Makwana, Sr. DR

Date of Hearing : 17/10/2024  
Date of pronouncement : 17/10/2024

**ORDER**

**PER OM PRAKASH KANT, AM**

These appeals by the assessee are directed against two separate orders dated 28.06.2024 and 02.07.2024 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment 2016-17 in relation to quantum assessment proceedings and penalty proceedings respectively.



2. At the outset, the Ld. counsel for the assessee submitted that appeal against quantum proceedings have been decided by the Ld. CIT(A) ex-parte and that too without deciding the issue on merit and therefore, the matter may be restored back for deciding afresh.

3. We have heard rival submission of the parties and perused the relevant material on record. We find that the Ld. CIT(A) in quantum assessment proceedings has decided the appeal observing as under:

*“3. The case was taken up for hearing and notices u/s 250 of the Act, were issued on 16/12/2020 & 19/01/2021 fixing the case for furnishing written submission. In response to these notices the Appellant has not made any submission. Again notices were issued on 12/02/2024 & 19/06/2024. The Appellant has not responded or provided any alternative address. In such condition I have no option but to decide the case on merits on the basis,of records available with this office.*

*4. It is observed from the records that the appellant was provided multiple opportunities of being heard by way of issue of hearing notices. But appellant has not responded to the said notices. From the non responding conduct of the appellant it may be concluded that he is not interested in completing the appeal proceedings. To reach the finality of this appeal the following judgments are refer to :*

*4.1 The law aids those who are vigilant, not those who sleep upon their rights This principle is embodied in the well known Latin dictum. "VIGILANTIBUS ET NON DORMIENTIBUS JURA SUB VENIUNT". The conduct of the Appellant, evidences that the Appellant fails on this principle of equity. Even the Hon'ble courts, in various pronouncements, have frowned upon the Appellants who file appeals but thereafter do not take any further interest in prosecuting those appeals.*

*4.2 The Hon'ble Income Tax Appellate Tribunal - Kolkata in the case of Pradeep Kumar Jhawar Kolkata vs. DCIT - CC -*



*XXI (15 March, 2016) (ITA Nos 450/Kol/2013 for Asstt. Year 2006-07) dismissed the appeal of the Appellant for non - prosecution.*

*4.3 The Hon'ble Madhya Pradesh High Court in the case of Estate of Late Tukojirao Holkar vs. CWT (223 (TR 480) held as under:*

*“If the party, at whose instance the reference is made, fails to appear at the hearing, or fails in taking steps for preparation of the paper books so as to enable hearing of the reference, the court is not bound to answer the reference.*

*Similarly, the Hon'ble Punjab & Haryana High Court in the case of New Diwan Oil Mills vs. CIT 112008) 296 ITR 495) returned the reference unanswered since the assessee remained absent and there was no assistance from the assessee*

*4.4 Considering the above, it is clear that the Appellant is not aggrieved with the impugned order and not keen on pursuing this appeal. Hence I compel to proceed to decide the appeal based on the records available in my office and on merit of the case.*

*Considering the records and merits of the case I have left with no option but to dismiss this appeal.*

*Accordingly, the appeal of the Appellant is dismissed.”*

3.1 Since the Ld. CIT(A) has adjudicated the appeal for the assessee in default and without any finding on the merit. Under the provisions of section 250(6) of the Act the Ld. CIT(A) referred to pass a reasoned and speaking order on the grounds of appeal raised by the assessee even in absence of any submission on the part of the assessee and therefore, we feel in appropriate to set aside the order of the Ld. CIT(A) and restore the appeal back to him for deciding afresh. As far as appeal against penalty proceedings is concerned



since the appeal in quantum proceedings has been sent to the file of the AO, the appeal against penalty proceedings is also set aside and matter is sent back to the AO for deciding afresh.

4. In the result, both the appeals of the assessee are allowed for statistical purposes.

**Order pronounced in the open Court on 17/10/2024.**

**Sd/-  
(KAVITHA RAJAGOPAL)  
JUDICIAL MEMBER**

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

Mumbai;  
Dated: 17/10/2024  
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**