

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

**BEFORE: SHRI AMARJIT SINGH, ACCOUNTANT MEMBER
&
SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER**

**ITA No. 4619/MUM/2024
(Assessment Year : 2010-11)**

**ITA No. 4621/MUM/2024
(Assessment Year : 2009-10)**

**ITA No. 4622/MUM/2024
(Assessment Year : 2008-09)**

**ITA No. 4623/MUM/2024
(Assessment Year : 2007-08)**

**ITA No. 4624/MUM/2024
(Assessment Year : 2006-07)**

Dev Steels Devang. K. Gandhi, C/O Anjaiah Dhanekula, Flat 1, Pearl, Plot 163, Sector 28, Vashi, Navi Mumbai, 400703.	Vs.	Deputy Commissioner of Income Tax Central Circle -8(2), Room No. 658, 6 th Floor, Aayakar Bhavan, Maharishi Karve Road, New Marine Lines, Churchgate, Mumbai-400020.
PAN/GIR No. AADFD9093M		
(Appellant)	..	(Respondent)

Assessee by	Ms. Vinita Shah
Revenue by	Shri. R. R. Makwana, Sr. DR
Date of Hearing	30/10/2024
Date of Pronouncement	13/11/2024

आदेश / ORDER**PER BENCH:**

The facts of all the five appeals are similar and issues arising are identical. The decision on facts and law for one appeal for any assessment year would answer the issue involved in the other four years. Therefore, all the five appeals are being decided by this common order for the sake of convenience and brevity. The facts only in ITA No. 4619/MUM/2024 are being narrated as under:

ITA No. 4619/MUM/2024

1. This appeal is directed against the impugned order dated 11.07.2024 passed in Appeal no. CIT(A), Mumbai-50/10003/2017-18 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.] 2010-11, wherein learned CIT(A) has dismissed assessee's appeal ex- parte.
2. The brief facts state that the assessee filed original return of income for A.Y. 2010-11, on 16.09.2010, declaring total income of Rs. 47,47,151/- and the same was accepted u/s. 143(1) of the Act. Subsequently, consequent to the search proceedings in the case of M/s. Unity infra projects Ltd, a survey action was carried out at two premises of the assessee firm. On the basis of discrepancies found during

search/survey, books of accounts of the assessee were rejected u/s. 145(3) of the Act and learned assessing officer estimated the commission of Rs. 57,38,167/- being 2% of the turnover of Rs. 28,69,08,367/-. Subsequently, to the assessment u/s.153C r/w section 143(3), as per the findings of DDIT (Inv.), the assessee was found to have earned commission @5% of the total turnover made during the relevant period. Learned PCIT (Central)-4 Mumbai, vide order dated 28.03.2016 passed u/s. 263 of the Act, set aside the assessment order and directed assessing officer to make denovo investigation in view of the report of DDIT(Inv.). Assessee did not furnish any explanation before the learned assessing officer, hence the assessment order dated 03.11.2016 was passed u/s. 143(3) r/w section 263 of the IT Act and learned assessing officer estimated the commission income @5% on the total turnover of assessee.

3. Assessee preferred an appeal before learned CIT(A) who dismissed assessee's appeal exparte.
4. Assessee has preferred this appeal on the ground that the learned CIT(A) has erred in confirming the addition of income @5% of the total turnover by passing ex-parte impugned order.
5. We have heard the parties and perused the material available on record.
6. Learned AR has argued that the impugned order has been passed ex-parte in violation of the principles of natural justice

by ignoring submissions dated 09.07.2024 made by the assessee. Prayed to set aside the impugned order.

7. Learned DR has submitted that the assessee was granted ten opportunities of hearing but remained irresponsive before the first appellate authority. Learned DR has supported the impugned order and prayed to dismiss the appeals.
8. On perusal of the impugned order, we notice that learned CIT(A) has afforded about ten opportunities of hearing on 06.06.2019, 03.07.2019, 23.07.2019, 19.09.2019, 17.10.2019, 31.01.2020, 19.02.2020, 05.03.2020, 19.02.2021, 24.06.2024 to assessee but for no avail. However, according to learned AR, assessee's submissions dated 09.07.2024 have not been considered by learned CIT(A), while passing impugned order. In such circumstances and in the interest of justice and fair play, we deem it just and appropriate to remit the matter back to the file of learned CIT(A) for adjudication on merits and to pass speaking order. We direct the assessee to be diligent and cooperative in attending the hearings and making submissions before the learned CIT(A) for the expeditious and effective disposal. 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 in respect of the merits of the case. The appeal is thus liable to be allowed for statistical purposes.

**ITA No. 4621/M/2024, 4622/M/2024,
4623/M/2024 & 4624/MUM/2024**

9. The grounds taken and the facts involved in all these four appeals are similar except the figure and dates, which have been considered by us in our conclusive findings arrived at ITA No. 4619/MUM/2024, the same shall apply mutatis mutandis in all these four appeals. These four appeals are thus liable to be allowed for statistical purposes.
10. In the result, assessee's appeals, ITA No. 4619/MUM/2024, 4621//MUM/2024, 4622/MUM/2024, 4623/MUM/2024, 4624/MUM/2024 are allowed for statistical purposes. All five impugned orders, each dated 11.07.2024 are set aside. All these cases are restored back to the file of the learned CIT(A) for statistical purposes.

Order pronounced on 13.11.2024.

**Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER**

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

Mumbai; Dated 13/11/2024
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//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai