

**IN THE INCOME TAX APPELLATE TRIBUNAL
“G” BENCH MUMBAI**

**BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER &
MS. PADMAVATHY S, ACCOUNTANT MEMBER**

**ITA No. 5021/Mum/2024
(Assessment Year: 2018-19)**

Mr. Shailesh Shashikant Sheth Room No. 12/6, Carmellos Bldg, 63/67, Pathak Wadi, L.T. Marg, Kalbadevi, Mumbai – 400 002.	Vs.	ITO, Ward 23(3)(6) Piramal Chamber, Mumbai – 400013.
PAN/GIR No. AAGPS9458J		
(Applicant)		(Respondent)

Assessee by	Shri Rajiv Khandelwal
Revenue by	Shri Nagnath Bhimarao Pasale, Sr. AR

सुनवाई की तारीख/Date of Hearing	13.11.2024
घोषणा की तारीख/Date of Pronouncement	27.11.2024

आदेश / ORDER

PER SANDEEP GOSAIN, JM:

The present appeal has been filed by the assessee challenging the impugned order 02.09.2024, passed u/s 250 of the Income Tax Act, 1961 ('the Act'), by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi ('Ld. CIT(A)'), for the assessment year 208-19.

2. At the very outset, on the perusal of the case file, we noticed that the CIT(A) has passed ex-parte order confirming

the penalty. The Ld. AR submitted that quantum has not been challenged as the same has been accepted by the assessee in order to buy peace but the fact remains that impugned order passed by the Ld.CIT(A) was ex-parte as the assessee could not appear or file their written submissions before the Ld.CIT(A).

3. In our view the interest of justice would be met in case the lis between the parties be decided on merits after providing fair opportunity of hearing to the assessee. Therefore, considering the above factual and legal position the Bench feels that the ends of justice would be met only if the matter is restored back to the file of the A.O to decide the matter afresh and the rights of the revenue would not be prejudice. Whereas in case proper and sufficient opportunity is not given to the assessee then in that eventuality the rights of the assessee shall be prejudice. Thus the appeal of the assessee is restored to the file of A.O to decide it afresh by providing one more opportunity of hearing to the assessee. The assessee shall not seek any adjournment on frivolous grounds and remain cooperative during the course of proceedings and the appeal of the assessee is thus allowed for statistical purposes.

4. Before parting, we make it clear that our decision to restore the matter back to the file of the AO shall in no way be construed as having any reflection or expression on the

merits of the dispute, which shall be adjudicated by the AO independently in accordance with law.

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

Order pronounced in the open court on 27.11.2024.

Sd/-

**(PADMAVATHY S)
ACCOUNTANT MEMBER**

Sd/-

**(SANDEEP GOSAIN)
JUDICIAL MEMBER**

Mumbai, Dated 27/11/2024

KRK, PS

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त (अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुम्बई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

1.

उप/सहायक पंजीकार (Asst. Registrar)
आयकर अपीलीय अधिकरण, मुम्बई / ITAT, Mumbai