

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

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

**ITA No. 4176/MUM/2024  
(Assessment Year : 2009-10)**

Mr. Nitesh Shah Shop no.26, Nanubai Desai road khetwadi, 400004.	Vs.	The Income Tax Officer 19(2)(4) Piramac chambers lalbang Mumbai.
<b>PAN/GIR No. AAZPS4489E</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	None
Revenue by	Shri. Rajeev Kumar Sahu, CIT DR
<b>Date of Hearing</b>	<b>26/11/2024</b>
<b>Date of Pronouncement</b>	<b>28/11/2024</b>

**आदेश / O R D E R**

**PER SUNIL KUMAR SINGH (J.M):**

1. This appeal has been preferred against the impugned order dated 07.06.2024 passed in Appeal no. CIT (A), Mumbai-30/10030/2019-20 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.] 2009-10, wherein learned CIT(A) has dismissed assessee's appeal ex-parte against the penalty order

dated 29.03.2019 passed u/s. 271(1)(C) of the Act for furnishing inaccurate particulars of income.

2. The brief facts under appeal state that the assessee is engaged in the business of trading in Ferrous and Non-ferrous Metals under the name and style of proprietorship concern M/s. Virami Steel. The appellant has filed its return of income for A.Y. 2009-10 on 29.09.2009, declaring total income at Rs.3,56,976/-. Thereafter, the case was re-opened u/s. 147 of the Act. The assessing officer passed the order u/s. 143(3) r.w.s. 147 of the Act on 16.03.2015 and assessed the income of Rs. 14,61,299/- after making addition of Rs. 11,04,323/- on account of non-genuine purchases. The proceedings u/s. 274 r.w.s 271(1)(C) of the Act were separately initiated for furnishing inaccurate particulars of income chargeable to tax and learned assessing officer levied penalty of Rs. 2,56,773/- vide penalty order dated 29.03.2019 passed u/s. 271(1)(C) of the Act.
3. Aggrieved, assessee preferred an appeal against the penalty order before learned CIT(A), who dismissed assessee's first appeal ex-parte.
4. Appellant has preferred this appeal before the Tribunal on the ground that the income tax authority has erred in levying the said penalty.
5. None responded for the assessee. Heard learned DR and perused the records.

6. Learned DR has submitted that assessee was provided sufficient opportunity of hearing by learned CIT(A) but for no avail. Learned DR has supported impugned order.
7. On perusal of the impugned order, we notice that learned CIT(A) has afforded various opportunities of hearing to the assessee on 15.09.2021, 30.08.2022, 17.03.2023, 12.06.2023, 27.06.2023, 04.07.2023, 26.07.2023 and 28.05.2024 but for no avail. It is an accepted fact that the assessee did not participate in the proceedings before the first appellate authority. The learned CIT(A) was compelled to pass ex-parte impugned order in such circumstances. However, it is further noticed the impugned order is not based on any substantial discussion on the merits, whereas learned CIT(A) was expected to state the points for determination, decision thereon and the reasons for the decision as provided u/s. 250(6) of the Act. In the circumstances and in the interest of justice and fair play, we deem it just and appropriate to afford an opportunity to the assessee and remit the matter back to the file of learned CIT(A) for adjudication on merits. We further 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. Assessee should refrain from seeking any adjournment but for compelling and unavoidable circumstances. 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 liable to be allowed accordingly.

8. In the result, the appeal is allowed in above terms for statistical purposes. Impugned order dated 07.06.2024 is set aside. The case is restored back to the file of the learned CIT(A) for statistical purposes.

Order pronounced on 28.11.2024.

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

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

Mumbai; Dated 28/11/2024

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**