

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "C", MUMBAI**

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER AND
SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

**ITA No.1436/M/2013
Assessment Year: 2007-08**

M/s. Procyon Offshore Services Pvt. Ltd., (Now known as "Dolphin Offshore Shipping Ltd.), LIC Bldg., Plot No.54, Sector-II, CBD Belapur - 400614 PAN: AAACP2682G	Vs.	The Asstt. Commissioner of Income Tax, 5(1), Mumbai
(Appellant)		(Respondent)

**ITA No.1980/M/2013
Assessment Year: 2007-08**

The Asstt. Commissioner of Income Tax, 5(1), Room No.571, 5 th Floor, Aayakar Bhavan, M.K. Road, Mumbai – 400 020	Vs.	M/s. Procyon Offshore Services Pvt. Ltd., (Now known as "Dolphin Offshore Shipping Ltd.), LIC Bldg., Plot No.54, Sector-II, CBD Belapur - 400614 PAN: AAACP2682G
(Appellant)		(Respondent)

Present for:

Assessee by : Shri M. Subramanian, A.R.
Revenue by : Dr. S. Pandian, D.R.

Date of Hearing : 30.03.2016

Date of Pronouncement : 30.03.2016

ORDER

Per Sanjay Garg, Judicial Member:

The present are cross appeals one by the assessee and the other by the Revenue against the order dated 21.04.2010 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2007-08.

2. The assessee in its appeal has agitated the confirmation by the Ld. CIT(A) of the action of the Assessing Officer (hereinafter referred to as the AO) in passing the ex-parte assessment order under section 144 of the Act; whereas the Revenue has agitated the action of the Ld. CIT(A) in directing the AO to adopt average GP rate as against disallowance of entire expenditure made by the AO.

3. The Ld. A.R. of the assessee has contended that the AO, in this case, has passed the order ex-parte under section 144 of the Act without giving proper opportunity to the assessee to present its case. He has done so because the assessment was going time barred. He has further invited our attention to the impugned order of the Ld. CIT(A) to show that this plea was also taken before the Ld. CIT(A) and the Ld. CIT(A) had also called for a remand report in this respect. The Ld. A.R. has further invited our attention to para 5.3 of the impugned order and has contended that even the assessee before the Ld. CIT(A) had moved an application under rule 46A to produce additional evidences in support of its claim but the same has been rejected by Ld. CIT(A). He, therefore, has contended that the assessee was in fact not given proper opportunity to represent its case that the ex-parte assessment order passed by the AO under section 144 of the Act is liable to be set aside.

4. We find that the Department has also agitated the action of the Ld. CIT(A) in adopting a particular methodology i.e. average GP rate of earlier years in framing the assessment in question. At this stage, both the Ld. Representatives of the parties have submitted that in this case the matter should be restored to the file of the AO for assessment afresh. After considering the submissions of the Ld. Representatives of the parties, we are of the view that the interest of justice will be well served if the matter is restored to the file of the AO for assessment afresh. Needless to say that the AO will give proper

opportunity to the assessee to produce the necessary evidences and details and then pass a speaking order.

5. With the above observations both the above titled appeals of the Revenue as well as of the assessee are treated as allowed for statistical purposes.

Order pronounced in the open court on 30.03.2016.

Sd/-
(Ramit Kochar)
ACCOUNTANT MEMBER

Sd/-
(Sanjay Garg)
JUDICIAL MEMBER

Mumbai, Dated: 30.03.2016.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.