

IN THE INCOME TAX APPELLATE TRIBUNAL  
“E” Bench, Mumbai  
Before Shri B.R. Baskaran (AM)& Shri Pawan Singh (JM)

I.T.A. No. 2223/Mum/2015  
(Assessment Year 2009-10)

Seepromed 16-17, Shiv Krupa Industrial Estate LBS Marg Vikhroli West Mumbai-400 083.	Vs.	ITO 23(1)(4) Mumbai
(Appellant)		(Respondent)

PAN No.AAAFS3696L

Assessee by	Shri Mehul Shah
Department by	Shri Sridhar E.
Date of Hearing	6.2.2017
Date of Pronouncement	6.2.2017

O R D E R

Per B.R. Baskaran (AM) :-

The appeal filed by the assessee is directed against the order dated 28.10.2013 passed by the learned CIT(A)-33, Mumbai and it relates to A.Y. 2009-10. The assessee is aggrieved by the decision of the learned CIT(A) in confirming the addition of ₹ 18.21 lakhs made by the Assessing Officer.

2. Learned counsel appearing for the assessee submitted that the learned CIT(A) has passed an ex-parte order, since the assessee did not respond to the notices issued to him by post. Thereafter, the learned CIT(A) also send a notice through notice server, but the same could not also be served. Hence the learned CIT(A) has passed the impugned order ex-parte, without presence of the assessee. Learned AR submitted that the assessee has closed his business activity due to heavy losses and hence he could not receive the notices issued by the learned CIT(A). He submitted that the assessee came to know about the order passed by the learned CIT(A) only when the Assessing Officer initiated penalty proceedings. Since the learned CIT(A) has passed the order without

hearing the assessee, learned AR prayed that the matter may be restored to his file for adjudicating the same afresh.

3. On the contrary, learned Departmental Representative submitted that the assessee has received notice issued by the Assessing Officer during the course of penalty proceedings, which was served to the very same address. Accordingly, learned Departmental Representative submitted that the assessee did not appear before the learned CIT(A) willfully and accordingly objected to the plea put forth by learned AR.

4. We have heard the parties and perused the record. We noticed that the learned CIT(A) has dismissed the appeal of the assessee without disposing the issues on merit. We further noticed that the notice server through whom notice was issued by the learned CIT(A) also could not serve the notice as the assessee was not available at the premises. Learned AR submits that the assessee has closed down the business due to losses and hence he could receive the notices issued by Ld CIT(A). Under these set of facts, in the interest of natural justice, we are of the view that the assessee should be provided with an opportunity to represent his case before the learned CIT(A). However, for the reasons stated by Ld D.R, we are of the view that the assessee should bear a cost for his failure to receive the notices and to appear before the learned CIT(A). Accordingly, we impose a cost of ₹ 2000/- on the assessee which shall be paid to the credit of the Income Tax Department on or before 28.2.2017. Subject to the payment of above cost, we set aside the order passed by the learned CIT(A) and restore the same to his file with the direction to adjudicate the issues urged before him on merits. The assessee is also directed to cooperate with the learned CIT(A) without fail.

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

Order has been pronounced in the Court on 6.2.2017.

Sd/-  
(PAWAN SINGH)  
JUDICIAL MEMBER

Sd/-  
(B.R.BASKARAN)  
ACCOUNTANT MEMBER

Mumbai; Dated : 6/2/2017

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

PS

BY ORDER,

(Dy./Asstt. Registrar)  
ITAT, Mumbai