

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "B", MUMBAI

Before Shri P K Bansal, VP & Shri Pawan Singh, JM

ITA No. 1639/Mum/2008 for A.Y. 2000-01
ITA No. 1640/Mum/2008 for A.Y. 2000-01
ITA No. 1641/Mum/2008 for A.Y. 2001-02
ITA No. 1642/Mum/2008 for A.Y. 2001-02

New Engg Centre, C/o Jayachandran Nadar, Shop No.12, Gopal Sharma Estate Saki Naka Pipeline, Mohali Village Opp Saki Naka Post Office Andheri, Mumbai- 400 072 PAN : AAAFN2058D	Vs.	ITO 21(3)(4) Mumbai
(Appellant)		(Respondent)

Appellant By : Shri Prakash Pandit
Respondent By : Shri V K Agarwal

Date of Hearing :29.05.2017	Date of Pronouncement : 30.05.2017
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ORDER

Per P K Bansal, Vice-President:

All these appeals filed by the assessee against respective orders of the CIT(A) are disposed of by this common order for the sake of convenience.

2. ITA No. 1640 & 1642/Mum/2008 relate to the merit of the case while the appeal in ITA Nos. 1639 & 1641/Mum/2008 relate to the levy of penalty u/s.271B of the Act.

3. In all these appeals, the assessee has taken common grounds being ground nos. 2 & 3 in ITA No. 1640 & 1642/Mum/2008 & ground nos. 1 & 2 in ITA Nos. 1639 & 1641/Mum/2008. These grounds read as under:

"1. The learned Commissioner of Income-tax (Appeals) has erred in law and in facts in not complying with the principles of natural justice. The order passed therefore is invalid and incorrect.

2. The learned Commissioner of Income-tax (Appeals) has erred in law and in facts in not appreciating that the assessing office had passed the order without complying with the principles of natural justice."

4. On the basis of these grounds, the learned AR vehemently contended before us that the CIT(A) has passed ex-parte order. The notice for the fixation of the appeal could not be served on the assessee and the fact remains that the CIT(A) had passed the order without giving effective hearing to the assessee.

5. The learned DR, on the other hand, relied on the order of the CIT(A) and vehemently contended that the CIT(A) has given sufficient opportunity to the assessee by sending notice through post and through the inspector even though the assessee was not available and, therefore, ultimately notice for hearing was served by affixture of notice in front portion of the shop.

6. We have heard the rival submissions and carefully considered the same along with the orders of the tax authorities below. We noted that from the facts as stated by the CIT(A) in para 2 of its order, common in respect of all

these four appeals, that the CIT(A) had fixed the hearing initially on 03.09.2004 by sending notices dated 09.08.2004. These notices were served by speed post on 23.08.2004. But on the date of hearing, a partner moved an application for adjournment stating that he was suffering from appendicitis and admitted in Lilavati hospital, therefore, the CIT(A) adjourned the case to 11.10.2004. But on that date there was no attendance. Thereafter, the case was fixed from time to time and ultimately the notice was sent through an inspector, who affixed the notice on 13.12.2004 on the front portion of the shop. However, there being no compliance, the CIT(A) disposed of the appeals *ex parte*. The facts remain that the assessee was never heard and notice also could not be served on the assessee as the assessee was not available. As per the provision of section 250(2), the assessee has a right to be heard either in person or through his representative. From the facts and the orders of the CIT(A), it is apparent that in the absence of service of notice, the assessee could not be heard and the CIT(A) passed an *ex parte* order. We, therefore, in the interest of justice and fair play to both the parties, set aside the orders of the CIT(A) and restore all the appeals to the file of the CIT(A) with a direction to re-adjudicate all these appeals afresh after giving proper and sufficient opportunity to the assessee. The assessee is also directed to represent its case before the CIT(A) and produce all the documents and evidences on which he rely.

7. In the result, all the appeals filed by the assessee are allowed for statistical purpose.

Order pronounced in the open court on 30th day of May, 2017.

Sd/-
(Pawan Singh)

JUDICIAL MEMBER

Mumbai; Dated: 30th May, 2017

SA

Sd/-

(P K Bansal)

VICE-PRESIDENT

Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The CIT(A), Mumbai
4. The CIT
5. DR, 'E' Bench, ITAT, Mumbai

//True Copy//

BY ORDER,

(Assistant Registrar)
Income Tax Appellate Tribunal, Mumbai