

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "E", MUMBAI**

BEFORE SHRI B.R.BASKARAN (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No 5913/MUM/2011
Assessment Year: 2005-06**

Sunil Mehra. Harichand Mills Compound, LBS Marg, Vikroli(W), Mumbai- 400 076. PAN:- AAKPM5773C (Appellant)	Vs.	The ITO- 23(1)(2), Bandra Kurla Complex, Mumbai. (Respondent)
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Appellant by : Ms. Shilpi Jain
Respondent by : Shri. A.K.Kardam

Date of Hearing: 20/10/2016
Date of Pronouncement: 31/10/2016

ORDER

PER RAM LAL NEGI, JM

The present appeal has been preferred by the assessee against order dated 25/05/2011 passed by the Ld. CIT(Appeals)-33 Mumbai for the Asst. Year 2005-06 whereby the Ld. CIT(A) partly allowed the appeal filed by the assessee against assessment order passed u/s 143(3) of the Income Tax Act, 1961 (in short 'the Act').

2. Still aggrieved, the assessee in appeal before the Tribunal raising the following grounds of appeal:-

On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in :-

- i. Not giving an opportunity of being heard*
- ii. Confirming the addition of Rs. 18,14,129/- to income from House property by adopting the market rent when some of the units were under the tenancy law and in litigation.*
- iii. Confirming the addition of:*
 - 1. Expenses of Rs. 1,47,280 (being Telephone bills not submitted)*
 - 2. Telephone expenses of Rs. 8,923 (59,490@15%),*
 - 3. Travelling Exp of Rs. 11,812 (78,746 @15%),*
 - 4. Vehicle Exp of Rs. 31,626 (2,10,840 @ 15%)*
 - 5. Membership & Subscription of Rs. 52,897 (100% disallowed) &*
 - 6. Salaries & Wages of Rs. 42, 168 (for want of details of Salary & wages out of Rs. 2,17,164 claimed)*

Any consequential relief, to which the Appellant may be entitled under the law in pursuance of the aforesaid grounds of appeal, or otherwise, may thus be granted.

3. The Ld. authorized representative for the assessee (AR) at the outset submitted that the impugned order is bad in law, as the same has been passed in violation of principle of natural justice. The assessee was not afforded reasonable opportunity of being heard. Hence the order is liable to be set aside.
4. On the other hand the Ld. Departmental Representative (DR) submitted that since the assessee did not appear on the date of hearing, the assessee cannot take the plea that the Ld. CIT (A) has wrongly proceeded *ex parte* without affording opportunity of being heard.
5. We have heard the rival submissions and also gone through the material placed before us. We notice that the appeal was fixed for hearing on 11.9.2009

and the notice to this effect was issued 24.8.2009. In response to the said notice, the assessee sought adjournment with the request to post the appeal for hearing by the end of October, 2009. Then after a gap of more than one year, notice was again issued by the Ld. CIT(A) on 12.5.2011 directing the assessee to appear on 25.05.2011 (wrongly typed as 25.02.2011). Since, on 25.05.2011 none appeared on behalf of the assessee, the Ld. CIT(A) decided the appeal *ex parte*. It is also not clear from the impugned order that notice dated 12.5.2011 was duly served upon the assessee. The aforesaid facts suggest that the assessee was not given a reasonable opportunity of being heard and the order was passed in violation of one of the principles of natural justice and fair play. We are therefore, of the considered view that the assessee should get an opportunity to present his case before the first appellate authority. Hence, we allow the first ground of appeal of the assessee in the interest of justice and without deciding the appeal on merit, send the appeal back to the Ld. CIT(A) for adjudicating the same afresh after giving a reasonable opportunity of being heard to the appellant/assessee. The appeal is disposed of accordingly.

6. In the result, the assessee's appeal for the assessment year 2005-06 is partly allowed.

Order pronounced in the open court on 31st October, 2016

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

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated:31/10/2016

आदेश प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**

Pramila