

THE INCOME TAX APPELLATE TRIBUNAL  
"SMC" Bench, Mumbai  
Shri Shamim Yahya (AM)

I.T.A. No. 4554/Mum/2017 (Assessment Year 2007-08)

Shri Devendra C. Vibhakar 101-B, Ramjas CHSL Devidas Lane, Borivali-W Mumbai-400 103.  PAN : AAAPV5079J (Appellant)	Vs.	ITO -25(1)(1) Mumbai  (Respondent)
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Assessee by	Shri Paresh Gohil
Department by	Ms. Smita Verma
Date of Hearing	16.12.2020
Date of Pronouncement	1.1.2021

ORDER

This is an appeal by the assessee against the order of learned Commissioner of Income Tax (Appeals) [in short learned CIT(A)] dated 10.3.2015 pertaining assessment year 2007-08 wherein learned CIT(A) has dismissed the appeal without any discussion on merits by simply noting the grounds and observing as under :-

"The assessment was completed u/s 143(3) on 30.11.2009 at a total income of Rs.11,73,710/- as against the returned income of Rs.1,73,710/-. Thereafter, the case was selected for scrutiny u/s 148 of the I.T. Act after recording the reasons for re-opening of assessment. Notice u/s 142(1) of the Act was issued on 4.9.2012 and 4.1.2013.

The AO raised the issue regarding unproved liability, unexplained cash credit u/s 68 and unexplained investment. Explanation offered of the assessee has not been accepted by the AO and the addition was made against which the assessee is in appeal.

After having filed the appeal, however, despite fixing the case for hearing on 4 different occasions, no credible argument/ explanation has been provided by the assessee to substantiate the claim in respect of grounds of appeal and therefore, the issue cannot be taken up on merit. In the light of the above facts, the appeal is dismissed."

2. This appeal was earlier disposed of by this Tribunal vide order dated 7.11.2019, subsequently vide Miscellaneous Application order dated 3.7.2019, the said order was recalled. Pursuant to the recall the appeal has been heard.

3. Upon hearing both the counsel and perused the records I find that it is incumbent upon learned CIT(A) to pass an order on the merits of the case and not dismissed the appeal virtually for non-prosecution. For this proposition I place reliance upon the following case laws :-

- CIT Vs. Premkumar Arjundas Luthra-HUF (2017) 154 DTR 302(Bom)
- CIT Vs. Chenniappa Mudaliar (1969) 74 ITR 1 (SC)

4. Moreover the laconic and non-speaking order of learned CIT(A) is not sustainable. Hon'ble Supreme Court in the case of Sahara Financial Corporation Ltd. Vs. CIT (300 ITR 403) has held that Rule of natural justice are applicable to administrative orders also. Accordingly, in the interest of justice I remit the issue raised in the appeal to the file of learned CIT(A). Learned CIT(A) is directed to consider the issue afresh and pass an order on the merits of the case after giving the assessee proper opportunity of being heard.

5. Learned Counsel of the assessee has also given undertaking that he shall appeal before learned CIT(A) suo moto within two months of this order to canvas the appeal.

6. In the result, this appeal by the assessee stands allowed for statistical purpose.

Order pronounced under Rule 34(4) of the ITAT Rules by placing the result on notice board on 1.1.2021.

Sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER

Mumbai; Dated : 1/1/2021

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,

(Assistant Registrar)  
ITAT, Mumbai