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

Before Shri Rajendra Singh, AM and Shri V.Durga Rao, JM

ITA No.3900/Mum/2011 : Asst. Year 2007-2008

Shri Chamanlal V.Awtaney A-402, Reviera Tower Lokhandwala Township Kandivali (East) Mumbai – 400 101. **PAN : ADJPA0657M.**	Vs.	The Dy.Commissioner of Income-tax Circle 15(3) Mumbai.
(Appellant)		(Respondent)

Appellant by : Shri Vishwas V.Mehandale
Respondent by : Shri Srinivas Reddy

Date of Hearing : 13.03.2012		**Date of Pronouncement :13.03.2012**

O R D E R

Per V.Durga Rao, JM :

This appeal by the assessee arises out of the order passed by the Commissioner of Income-tax (Appeals)-XXVIII on 08.03.2011 relates to the assessment year 2007-2008.

2. The assessee has raised as many as 8 grounds in its appeal. The first ground is against the dismissal of appeal by the learned CIT(A) for assessee's non-appearance before him.

3. The brief facts of the case are that the assessee is an individual engaged in the business as a distributor of paints and hardware. The assessee was maintaining his books of account and the same were audited u/s 44AB of the Act. The assessee filed his return showing income at ₹21,92,132. However, the A.O., after making various additions, assessed the income of the assessee at ₹83,41,190. The assessee carried the matter in appeal before the learned

CIT(A). The learned CIT(A) dismissed the appeal of the assessee on the ground that there was a delay of 3 days in filing the appeal and also due to non-appearance on behalf of the assessee, against which the assessee is in appeal before us. Before us, the learned Counsel for the assessee submitted that the learned CIT(A) was not justified in dismissing the appeal *ex parte,* therefore, one more opportunity has to be given to the assessee to pursue the appeal. Insofar as the non-appearance is concerned, it is submitted that the assessee was engaged a Counsel viz. Shri Gautam Shah, who sought various adjournments, and ultimately when the matter was called on for hearing on 07.03.2011, he did not attend before the learned CIT(A). The assessee has submitted that he has confronted with his Counsel and has taken proof from Shri Gautam Shah. Now the assessee has engaged another Counsel, therefore, one more opportunity may be given to pursue his case in the interest of justice. The learned Departmental Representative has not raised any serious objection.

4. We have heard both the parties and gone through the orders of the authorities below. This appeal is filed against the *ex parte* order passed by the learned CIT(A) and one of the grounds raised in this appeal is for granting of another opportunity to pursue the case before the learned CIT(A). To substantiate his argument, he has filed an affidavit explaining the reasons for non-appearance before the learned CIT(A) and also engaging another Counsel. The affidavit further states that he has primarily complied with as per the directions of the learned CIT(A) and requested for granting one more opportunity to pursue the appeal. We have considered this affidavit filed by the assessee dated 12th March, 2012 and we are of the considered opinion, the ends of justice will meet adequately if one more opportunity be granted to the assessee to pursue his case before the learned CIT(A). We order accordingly. We, therefore, set aside the impugned order and remit the matter back to the file

of the learned CIT(A) and direct him to consider the case afresh including delay condonation and pass fresh order in accordance with law.

5. In the result, the appeal is allowed for statistical purposes.

Order pronounced in the open Court on this **13th day of March, 2012.**

Sd/-	**Sd/-**
(Rajendra Singh)	**(V.Durga Rao)**
ACCOU NTANT MEMBER	**JUDICIAL MEMBER**

Mumbai : **13th March, 2012.**
Devdas*

Copy to :
1. The Appellant.
2. The Respondent.
3. The CIT concerned
4. The CIT(A) - XXVIII, Mumbai
5. The DR/ITAT, Mumbai.
6. Guard File.

TRUE COPY.

By Order

Assistant Registrar, ITAT, Mumbai.