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

BEFORE SHRI R.C. SHARMA, ACCOUNTANT MEMBER AND
SHRI SANDEEP GOSAIN, JUDICIAL MEMBER

ITA NO. 8042/MUM/2010 : (A.Y : 1997-98)

Shri Nimish C. Shah
107, Shroff Mansion,
32, S. Gandhi Marg, Mumbai-2.
PAN : AAFPS3172C (Appellant)

Vs.

ACIT-14(2), Mumbai
(Respondent)

Assessee by : None
Revenue by : Shri Neil Philip

Date of Hearing : 21/07/2016
Date of Pronouncement : 12/08/2016

O R D E R

PER SANDEEP GOSAIN, JM :

The present appeal has been filed by the assessee against the order of Commissioner of Income Tax (Appeals)-14, Mumbai (in short 'CIT(A)') dated 19.12.2008 for A.Y 1997-98 on the following grounds of appeal :

"1. On the facts and in the circumstances of the case and in law the learned Commissioner of Income Tax (Appeals) has erred in confirming the order of the Assistant Commissioner of Income Tax without appreciating the fact that your appellant is entitled to depreciation on the trucks amounting to Rs.6,91,464/-.

2. On the facts and in the circumstances of the case and in law your appellant has complied with all the requirements of section 32 of the Income Tax Act 1961 and entitled to the depreciation of Rs.6,91,464/-."

2. The brief facts of the case are that the original assessment was set-aside by the Tribunal vide order dated 22.12.2004 on the issue of disallowance of depreciation amounting to Rs.6,91,464/- on 5 tankers. The issue was referred back to the Assessing Officer for verifying the evidence for the first time produced before the Tribunal. When the matter was restored to Assessing Officer, the Assessing Officer passed order of assessment u/s 143(3) of the Income Tax Act, 1961 (in short 'the Act') dated 13.3.2006 thereby holding that the assessee is not entitled to depreciation. Aggrieved by the order of Assessing Officer, assessee preferred an appeal before CIT(A) on the grounds mentioned hereinabove.

3. Today the case was fixed for argument but nobody appeared before us even inspite of several calls nor any application for adjournment moved on behalf of the assessee. Therefore, in these circumstances, the assessee is proceeded *ex parte* in the present appeal. On the other hand, the Ld. DR is present and ready for argument, therefore, with the assistance of the Ld. DR we decided to dispose of the appeal on merits.

4. At the very outset, we have perused the grounds of appeal as well as the impugned order passed by CIT(A). It transpires that the assessee was *ex parte* before the CIT(A) and on further perusal, we

found that as per the facts of the case, assessee has claimed depreciation on oil tankers which was initially denied by the Assessing Officer and on appeal against the order of assessment, CIT(A) in the first round of litigation has also confirmed the order of assessment. Thereafter, in appeal before ITAT, the second appeal as well as penalty appeal was set-aside by the Tribunal for *de novo* assessment on the basis of fresh documents produced by the assessee. Now, from the perusal of the impugned order of CIT(A) as well as the Assessing Officer we noted that the Assessing Officer has again disallowed the claim of depreciation by simply mentioning that the facts of the case are distinguishable from the facts of the case of M/s. Anil Bulk Carriers v. CIT decided by Hon'ble Allahabad High Court. Subsequently, the appeal before CIT(A) was also dismissed by holding that the assessee has not appeared before the CIT(A) thereby upholding the view of Assessing Officer.

5. Considering the interest of justice, equity and fair play, we are of the considered view that the *lis* between the parties should be decided on merits and a fair opportunity of hearing should be given to the assessee/aggrieved person and at the same time, it is a settled law that rules of procedure are handmaid of justice. Therefore, considering the substantial cause of justice, we restore the case back to the file of CIT(A) with a direction to the Registry to intimate the assessee to be present before the CIT(A) within two months from the date of receipt of this order and further directions are given to CIT(A) to pass a fresh order in appeal after providing opportunity of hearing to the assessee.

6. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 12th August, 2016.

Sd/-	Sd/-
(R.C. SHARMA)	**(SANDEEP GOSAIN)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai, Date : 12th August, 2016

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Copy to :

1) The Appellant
2) The Respondent
3) The CIT(A) concerned
4) The CIT concerned
5) The D.R, “B” Bench, Mumbai
6) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai