

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

Before Justice Dev Darshan Sud, President

ITA No.189/Mum/2011 : Asst.Year 2007-2008

M/s.Sainath Enterprises B-6, Motivihar Building. N.S.Road, Mulund (West) Mumbai – 400 080. PAN : AABFS6544E	बनाम/ Vs.	Asst.Commissioner of Income-tax Range 23(3) Mumbai.
Appellant		Respondent

Appellant by : Shri M.Subramanian

Respondent by : S/Shri Deepkant Prasad, J.Premanand & M.Rajan

Date of Hearing : 10.11.2016

Date of Pronouncement : 18.11.2016

ORDER



This reference under Section 255(4) of the Income Tax Act, 1961, arises out of the difference which arises in the opinion of two Hon'ble Members dealing with the above appeals.

2. This reference has been put up before me on the questions, which do not arise for determination. It is undisputed that the assessee prayed for withdrawal of the appeal filed by him, which was declined by the learned Accountant Member on the ground that it should be listed together with the appeal filed by the department. I do not find this to be a cogent reason for declining the prayer of the appellant-assessee. It is now well settled that a petitioner / plaintiff is the *dominus litis* and it is open to him to pursue or abandon his case. Withdrawal cannot be denied except when the person making the prayer has obtained some advantage / benefit, which he seeks to retain. In the present case, I do not find any such situation. The prayer

made by the assessee is also not opposed by the Department. In the circumstances, the prayer made by the assessee for withdrawal of appeal is granted and appeal will be dismissed as withdrawn. The appeal filed by the department is listed immediately for disposal in the regular bench.

Order pronounced in the Open Court.

Sd/-
[Justice Day Darshan Sud]
PRESIDENT

Mumbai ; Dated : 18th November, 2016.
Devdas*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A).
4. CIT-DR

सत्यापित प्रति //True Copy//



BY ORDER,

Assistant Registrar, ITAT Mumbai