

**IN THE INCOME TAX APPELLATE TRIBUNAL, KOLKATA 'D' BENCH,  
KOLKATA**

**Before Shri Waseem Ahmed, Accountant Member and  
Shri S.S. Viswanethra Ravi, Judicial Member**

**I.T.A. No. 1073/KOL/2016**  
Assessment Year: 2007-08

**Smt. Gunjan Bhiwaniwala**  
PAN: AFVPB9437L,  
17, Balmukumd Makkar Road,  
Kolkata-700 007.

Appellant

-Vs.-

**I.T.O Ward 43(4), Kolkata**  
Kolkata.

Respondent

Appearances by:

Shri Soumitra Choudhury, Advocate, Ld.AR for the assessee  
Shri Tanuj Neogi, JCIT, Ld.DR for the revenue

Date of hearing : 12-01-2017  
Date of pronouncement : 20-01-2017

**ORDER**

**Shri S.S.Viswanethra Ravi, JM:**

This appeal by the Assessee is against the order dt: 01-03-2016 passed by the Commissioner of Income Tax-(Appeals), 21, Kolkata for the assessment year 2007-08.

2. In this appeal the assessee has raised as many as six grounds of appeal, amongst which the only effective ground in this appeal is to be decided

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whether the CIT-A justified confirming the income of assessee at Rs.10,00,000/- on estimation without any basis in the facts and circumstances of the case.

3. The assessee being individual running her business under the name and style 'M/s. Mohini Computect' filed her return of income on online on 14-11-2007. Notices u/s. 143(2)/142(1) of the Act were issued. In response to which the AR of the assessee appeared and filed an affidavit stating that all the books of account and records pertaining to business of assessee were seized by the Deputy Commissioner Sales tax, Central Section (Investigation Wing) and expressed inability to comply with the conditions set out in the notice issued u/s. 142(1) of the Act. According to AO, the assessee was intentionally avoiding to submit the books of account and records for seeking adjournments. Thereby the AO determined the income of assessee on estimation at Rs.10,00,000/- and to that effect an order u/s. 144 of the Act was passed on 30-12-09.

4. In first appeal, before the CIT-A the Id.AR of assessee reiterated the same submissions as deposed by said affidavit before the AO. The CIT-A sought for remand report from the AO. In the remand report, the AO narrated the same as mentioned in his said order dated 30-12-2009 passed u/s. 144 of the Act. The CIT-A after taking into consideration the same confirmed the impugned action of the AO in estimating the income of assessee at Rs.10,00,000/-.

5. Before us the Id.AR of the assessee submits that the order passed u/s. 144 of the Act by the AO is illegal/invalid as there was no books or records pertaining to assessee's business produced before AO. The Id.AR of the assessee further submits that the assessee deposed in the said affidavit filed

before the AO that she does not have any kind of evidence supporting the transactions of her business as the Deputy Commissioner Sales tax, Central Section (Investigation Wing) seized all such records on 26-05-2008. Knowing this fact very well that the assessee does not have any records, the AO without any basis on estimation determined the income of assessee. In support of his contentions, he also submits before us the copies of audit report in Form 3CB and 3CD, trading account & balance sheet of assessee as on 31-03-2007. Finally, he prayed before the bench to quash the same.

6. On the other hand, the Id.DR submits that the assessee could not submit any kind of evidence whatsoever before the AO and the CIT in support of her contention. He relied on the orders of the AO and CIT-A.

7. Heard rival submissions and perused the material available on record. We find from the first instance that the assessee filed an affidavit deposing that all her books of account and records were seized by the Deputy Commissioner Sales tax, Central Section (Investigation Wing) and expressed her inability to submit the required information/documents as sought by the AO under mandatory and statutory notices issued by the AO. It is also noticed that same kind of arguments were canvassed by the assessee, but no consideration has been afforded to assessee. In view of above, we deem it fit and proper to remand the issues involved in this appeal to the file of the AO for his fresh consideration and accordingly direct the assessee to take suitable steps in getting certified copies of accounts and seized documents from the said Investigation Wing of Deputy Commissioner Sales tax, Central Section (Investigation Wing) and file the same before the AO for his consideration. Thus, this ground of assessee's appeal is allowed for statistical purpose.

8. In the result, the appeal of the Assessee is allowed for statistical purpose.

Order pronounced in the open Court on 20-01-2017.

Sd/-  
**Waseem Ahmed**  
**Accountant Member**

Sd/-  
**S.S. Viswanethra Ravi**  
**Judicial Member**

Dated 20-01-2017

Copies to :

\*\*PP/SPS

(1) Appellant/Assessee: Smt. Gunjan Bhiwaniwala 17 Balmukund Makkar Road, Kolkata-700 007.

(2) Department/Respondent: The Income Tax Officer, W 43(4), 3 Govt Place, Kolkata-700 001.

(3) Commissioner of Income-tax (Appeals)

(4) Commissioner of Income Tax, Kolkata

(5) The Departmental Representative

(6) Guard File By order

Assistant Registrar,  
Income Tax Appellate Tribunal  
Kolkata