

आयकर अपीलीय अधिकरण "E" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "E" BENCH, MUMBAI
BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. No. 3672/Mum/2013

(निर्धारण वर्ष / Assessment Year : 2008-09)

Mrs. Tarika Shah, 304, Rishabh Mansion -3, S.V. Road, Jawahar Nagar, Goregaon West, Mumbai - 400 062.	बनाम/ v.	DCIT 24(3), C-11, 7 th floor, Pratyakshakar Bhavan, Bandra Kurla Complex, Bandra (east), Mumbai - 400 051.
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

PAN : ASOPS3910M

Assessee by	None
Revenue by :	Shri Rakesh Kumar Agrawal (D.R.)

सुनवाई की तारीख / **Date of Hearing** : 17-2-2016

घोषणा की तारीख / **Date of Pronouncement** : 29-4-2016

ORDER

Per Ramit Kochar, Accountant Member:-

This appeal is filed by the assessee against the order passed by learned Commissioner of Income Tax (Appeals) – 34, Mumbai (hereinafter called “the CIT(A)”), dated 07-02-2013 for the assessment year 2008-09, the appellate proceedings before the CIT(A) arising from the assessment order dated 15-12-2011 passed by the Assessing Officer (hereinafter called “the AO”) u/s 144 read with Section 147 of the Income Tax Act, 1961 (Hereinafter called “the Act”).

2. The grounds raised by the assessee in the memo of appeal filed with the Income Tax Appellate Tribunal, Mumbai (hereinafter called "the Tribunal") read as under:-

"1. Under the facts and circumstances of your appellant, the Learned CIT (A)-34 has erred in confirming the addition/ disallowance made by the Learned DCIT, without giving assessee reasonable opportunity of being heard.

1.01 The Ld. DCIT has made Additions & Disallowances solely on the basis of the Statement recorded during the survey of Appellant's Husband Mr. Tejas Shah without giving appellant reasonable opportunity to make submission on its behalf.

2. The Learned CIT(A)-34 erred in confirming treatment of Loans taken by the appellant of Rs. 6,322,332 as the Income of the appellant taxable under the provisions of the Income Tax Act.

3. The Ld. DCIT failed to appreciate the fact that the above Loans of Rs. 6,322,332 were taxed in the hands of the appellant's husband Mr. Tejas Shah in course of his assessment proceedings.

3.01 The Ld. DCIT failed to appreciate the fact that the same amount has been taxed twice i. e. in the hands of Both Appellant and Mr. Tejas Shah.

4. Under the facts and circumstances of the case, The Learned CIT(A)-34 erred in confirming Ld. DCIT's Assumption of Rs. 145,000 being basic exemption limit as the Income of the appellant.

5. The Ld. CIT(A)-34 has not given adequate opportunity to explain the facts of your appellant.

6. The Appellate Order is passed against the principles of natural justice & equity.

7. Your appellant craves leave to add, alter or delete any of the above grounds of appeal."

3. A survey action u/s. 133A of the Act was conducted by the Revenue on 13.08.2007 in the case of M/s. Sunteck Realty & Infrastructure Ltd., M/s. Natraj Financial & Services Ltd., Shri Tejas Shah and Smt. Tarika Shah on 13.8.2007. Report of survey proceedings was forwarded to the AO in which it is reported that Shri Tejas Shah(husband of the assessee) is rendering consultancy service in the matters related to formation, sale and transfer and

takeover of the listed companies and attendant accounting and allied services. He was also found to be driving force in price rigging activities. It was reported that the assessee has offered income in the form of interest income, interest on PO MIS, profit on commodity/share trading and miscellaneous income, aggregating to Rs.2,49,508/- for the year under consideration. It was reported that the assessee has claimed to have obtained unsecured loans from different parties which were not genuine. During the course of survey proceedings, the assessee has offered the following income for the previous year 2007-08 relevant to the assessment year 2008-09 as under:

Interest income	Rs. 846/-
Interest on post office MIS	Rs. 9,000/-
Profit/loss on commodity/share trading	Rs. 1,99,662/-
Miscellaneous income	Rs. 40,000/-
Loan	Rs. 63,22,332/-
Total	Rs. 65,71,840/-

The assessee did not file return of income for the assessment year 2008-09. Therefore, the case of the assessee was reopened u/s 148 of the Act after recording reasons for reopening. In response to the notice issued by the AO u/s 148 of the Act, the assessee did not file any return of income. No compliance whatsoever was made by the assessee even to notice issued u/s 142(1) of the Act and the assessee intentionally avoided the proceedings without reasonable cause. In the absence of assessee offering the afore-stated income of Rs. 65,71,840/- to tax as the assessee did not file any return for the assessment year 2008-09, the assessment was completed u/s 144 of the Act relying on the report of the survey whereby an amount of Rs. 65,71,840/- was treated as undisclosed income for the assessment year 2008-09, which was offered during the course of survey proceedings on 13.8.2007 as under :-

Interest income	Rs. 846/-
Interest on post office MIS	Rs. 9,000/-
Profit/loss on commodity/share trading	Rs. 1,99,662/-
Miscellaneous income	Rs. 40,000/-
Loan	Rs. 63,22,332/-
Total	Rs. 65,71,840/-

The assessee did not file any return of income for the assessment year 2008-09, therefore the income of the assessee is taken at Rs. 1,45,0001- which is maximum amount not chargeable to tax.

Thus, the income of the assessee for the assessment year 2008-09 was assessed at Rs.67,16,8401- by the AO vide assessment order dated 15.12.2011 passed u/s 144 read with Section 147 of the Act.

4. Aggrieved by the assessment order dated 15.12.2011 passed by the AO u/s 144 read with Section 147 of the Act, the assessee filed an appeal before the CIT(A).

5. The appeal was dismissed by the CIT(A) vide order dated 07.02.2013 as during the course of the appellate proceedings, there was no submissions made by the assessee on merits, while appearance was entered by the assessee and letter of adjournments were filed from time to time before the CIT(A) by the assessee. However, appeal was dismissed by the CIT(A) in limine without any discussions on merits, vide orders dated 07-02-2013.

6. Aggrieved by the orders of the CIT(A) dated 07-02-2013, the assessee filed the second appeal before the Tribunal.

7. There is no compliance on the part of the assessee before the Tribunal also, when this appeal was called for hearing on 17th February 2016.

8. Learned Departmental Representative submitted that survey was conducted u/s 133A of the Act on 13.08.2007 against the assessee and the assessee disclosed Rs.65,71840/- as income during the survey proceedings. The return of income has not been filed u/s 139 of the Act nor in pursuance to notice issued u/s 148 of the Act. The assessee was not attending the hearing before the AO. The assessment order was passed by the AO u/s. 144 read with section 147 of the Act. He also submitted that there was no compliance before the CIT(A) also, no replies on merits were submitted.

However, the CIT(A) has not decided the issues on merits but dismissed the appeal in limine.

9. We have heard the Id. DR and perused the material on record. In our considered view, the CIT(A) has not decided the appeal on merits but in fact instead the CIT(A) has dismissed the appeal in limine, while the CIT(A) is required to decide the appeal on merits. Attention is drawn to the provisions of section 250(6) of the Act, whereby the CIT(A) is required to dispose of the appeal on merits. Reference is drawn to Section 250(6) of the Act as under:

"Procedure in appeal.

Section 250

(6) The order of the 21[* * *] 92[Commissioner (Appeals)] disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reason for the decision.

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In our considered view and in the interest of justice, the CIT(A) should have decided the appeal on merits. Hence keeping in view peculiar facts and circumstance of the case and in the interest of justice ,we set aside - the order dated 07.02.2013 of the CIT(A) and restore back the entire matter of the assessment to the file of CIT(A) for de-novo and fresh assessment on merits after considering all the explanations and evidence to be filed by the assessee in her defense, if so desired by the assessee. Needless to say proper and adequate opportunity of being heard shall be granted to the assessee by the CIT(A) in accordance with the principles of natural justice and in accordance with law before framing fresh assessment in accordance with law. We order accordingly.

10. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 29-04-2016.

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

sd/-
(RAMIT KOCHAR)
ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated 29-04-2016

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व.नि.स./ R.K., Ex. Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)- concerned, Mumbai
4. आयकर आयुक्त / CIT- Concerned, Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai "E Bench
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai