

आयकर अपीलीय अधिकरण "एक-सदस्य" न्यायपीठ पुणे में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH, PUNE

BEFORE SHRI D. KARUNAKARA RAO, AM AND  
SHRI PARTHA SARATHI CHAUDHURY, JM

आयकर अपील सं. / ITA No. 283/PUN/2018

निर्धारण वर्ष / Assessment Year : 2008-09

Smt. Rashmi Shrikant Bhuruk,  
Prism Hsg. Society, Flat No. 1502,  
B2 Building, Behind Piser School,  
Aundh, Pune-411 007.  
PAN : AEWPB0437N

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Income Tax Officer,  
Ward 8(1), Pune.

.....प्रत्यर्थी / Respondent

Assessee by : Smt. Deepa Khare

Revenue by : Shri M.K. Verma

सुनवाई की तारीख / Date of Hearing : 07.02.2019

घोषणा की तारीख / Date of Pronouncement : 08.02.2019

**आदेश / ORDER**

**PER PARTHA SARATHI CHAUDHURY, JM :**

This appeal preferred by the assessee emanates from the order of Ld. CIT(Appeal), Pune-13 dated 04.05.2017 for the assessment year 2008-09 as per following grounds of appeal on record:

*"1.The learned CIT(A) erred in law and on facts in dismissing the appeal of the appellant ex-parte for non-attendance thereby confirming the additions of Rs 44,52,956/- made in the Assessment order.*

*2. The Ld CIT(A) erred in law and on facts in confirming the assessment made u/s. 144 when there was a sufficient reason for non-attendance and confirmed the additions which are arbitrary.*

*3. Ld CIT(A) erred in law and on facts in confirming addition of Rs.44,52,956/- as income from capital gains from transfer of development rights.*

*4. The appellant craves to add, alter, modify or substitute any ground of appeal at the time of hearing.”*

2. At the outset, we notice that there is a delay of 251 days for filing the appeal. That with regard to this delay, the Ld. AR of the assessee filed condonation petition along with affidavit stating reasons for such delay in filing the appeal before us. We have perused the condonation petition and the affidavit along with reasons for delay. We are convinced with the justification rendered by the assessee through these documents. We therefore condone the delay and proceed to hear the appeal on merits.

3. While perusing the grounds of appeal, we find that the Ld. CIT(Appeal) has passed an ex-parte order confirming the addition made by the Assessing Officer on the ground of non-attendance by the assessee. We have also gone through the Ld. CIT(Appeal)'s order and we find that detailed written submission was filed by the assessee. That even in the cause title of the CIT(Appeal)'s order, it is stated as “Present for the appellant Ms. Deepa Khare, CA” and therefore, it cannot be stated that there was non-compliance at the First Appellate Proceedings. However, when we look into the assessment order, the said order was passed u/s.144 r.w.s. 147 of the income Tax Act, 1961 (hereinafter referred to as ‘the Act’).

That on perusal of the assessment order, there was notice u/s.142(1) of the Act issued along with detailed questionnaire to the assessee asking for

submission of the various details with regard to the case of the assessee. However, there was no response from the assessee. It is with this background, the Assessing Officer completed assessment u/s.144 r.w.s.147 of the Act.

4. At the time of hearing, the Ld. AR of the assessee prayed for one final opportunity to represent their case before the Assessing Officer and stated that even at the First Appellate Authority, it was only the written submissions that were considered and the rights and liabilities are yet to be determined so far merits are concerned. The Ld. AR of the assessee prayed that the matter may be restored to the file of Assessing Officer for re-adjudication since assessment order passed u/s.144 of the Act and ensured that this time they will comply with all the notices and defend their case on merits before the Revenue Authorities.

5. The Ld. DR, per contra, has placed reliance on the orders of the Sub-ordinate Authorities.

6. We have perused the case records and have given thoughtful consideration to the arguments rendered by the parties herein. We have also perused the respective orders of the Revenue Authorities. In this case, it would be better in the interest of justice that the factual parameters should come up more clearly through proper representation of the assessee vis-à-vis proper adjudication by the Revenue Authorities.

In view of the matter, we set aside the order of the Ld. CIT(Appeal) and restore the matter to the file of the Assessing Officer for re-adjudication in compliance with the principles of natural justice.

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

Order pronounced on 08<sup>th</sup> day of February, 2019.

Sd/-  
**D. KARUNAKARA RAO**  
**ACCOUNTANT MEMBER**

Sd/-  
**PARTHA SARATHI CHAUDHURY**  
**JUDICIAL MEMBER**

पुणे / Pune; दिनांक / Dated : 08<sup>th</sup> February, 2019.

SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeal), Pune-13.
4. The Pr. CIT-5, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "एक-सदस्य" बेंच,  
पुणे / DR, ITAT, "SMC" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

// True Copy //

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.

		Date	
1	Draft dictated on	07.02.2019	Sr.PS/PS
2	Draft placed before author	07.02.2019	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		