

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

श्री डी. करुणाकरा राव, लेखा सदस्य, एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष ।  
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA Nos.3042 & 3043/AHD/2013

निर्धारण वर्ष / Assessment Year : 2008-09

Atut Fincap Ltd.,  
C/o. R. Sridhar,  
B-11, Kumar Meadows,  
Opp. Sagar Inn Hotel,  
Manjari, Pune - 412307

PAN : AADCA3793J

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Income Tax Officer,  
Ward - 1(3), Ahmedabad

.....प्रत्यर्थी / Respondent

Assessee by : Shri Ashok Kothary  
Revenue by : Shri S.B. Prasad

सुनवाई की तारीख / Date of Hearing : 09-01-2019

घोषणा की तारीख / Date of Pronouncement : 19-03-2019

**आदेश / ORDER**

**PER VIKAS AWASTHY, JM :**

These two appeals have been filed by the assessee against the ex-parte orders of Commissioner of Income Tax (Appeals)-6, Ahmedabad. In ITA No. 3042/AHD/2013 the assessee has assailed the quantum addition

confirmed by the Commissioner of Income Tax (Appeals). ITA No. 3043/AHD/2013 is directed against the order of Commissioner of Income Tax (Appeals) in confirming levy of penalty u/s. 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"). Both the impugned orders are of even date i.e. 11-10-2013.

Since, both the appeals are arising out of same set of facts, these appeals are taken up together for adjudication and are decided vide this common order.

**ITA No. 3042/AHD/2013**

2. The brief facts of the case as emanating from records are : The assessee company is engaged in the business of trading in shares, securities and mutual funds. The assessee company filed its return of income for the impugned assessment year on 29-09-2008 declaring total income of Rs.31,01,950/-. The case of the assessee was selected for scrutiny, consequently, statutory notice u/s. 143(2) of the Act was issued to the assessee on 29-09-2009. The notices issued by the Assessing Officer were returned back by the postal authority with remarks 'left'. Thereafter, the Assessing Officer issued notices u/s. 143(2) and u/s. 142(1) along with detailed questionnaire at the new address of the assessee at Pune. The notices sent to the assessee on Pune address were also received back un-served from the postal authority with remarks 'NF'. The assessee tried to serve notices to the assessee company through its Director. All the notices were again returned back by the postal authority with remarks 'NF'. As a last resort, the Assessing Officer served the notice on assessee through affixture at the address mentioned in the return of

income and proceeded with the assessment u/s. 144 of the Act. The Assessing Officer in scrutiny assessment proceedings made following additions in the income returned by the assessee :

- |      |   |                   |
|------|---|-------------------|
| i.   | Unexplained addition in capital,<br>share premium and share application money | Rs.1,22,99,500/-. |
| ii.  | Unexplained bank deposits   | Rs.7,07,07,464/-. |
| iii. | Unexplained investments in mutual funds and<br>shares and securities          | Rs.1,17,84,445/-. |
| iv.  | Disallowance of various expenses  | Rs.12,62,155/-.   |

Aggrieved against the assessment order dated 30-12-2010 passed u/s. 144 of the Act, the assessee filed appeal before the Commissioner of Income Tax (Appeals). Even before the Commissioner of Income Tax (Appeals) none appeared to represent the assessee hence, the Commissioner of Income Tax (Appeals) in an ex-parte proceedings dismissed the appeal and confirmed the additions. Now, the assessee is in second appeal before the Tribunal.

3. Shri Ashok Kothary appearing on behalf of the assessee submitted that the assessee company was initially having its registered office at Ahmedabad, therefore, the assessee filed its return of income and was assessed at Ahmedabad. The assessee shifted its operations and registered office from Ahmedabad to Pune in March, 2009. All the Directors of assessee company were residents of Pune, hence, there was no one in Ahmedabad at the relevant time when the Assessing Officer had issued notices for the impugned assessment year. This fact was brought to

the notice to Commissioner of Income Tax (Appeals) during First Appellate proceedings. In proceedings before the Commissioner of Income Tax (Appeals) Shri Rupesh Shah, Advocate represented the assessee on some initial dates of hearing. Thereafter, the Commissioner of Income Tax (Appeals) issued notice dated 22-07-2013 fixing the date of hearing of appeal on 22-08-2013. However, the said notice was not received by the assessee. Consequently, neither the authorized representative of assessee nor the counsel of assessee could appear on the date fixed. The ld. AR contended that Shri Rajgopalan Sridhar, Director of the assessee company was looking after the affairs of company till 16-11-2008. He was arrested by the Police in September, 2009 in some criminal complaint lodged by one of the erstwhile employers. After arrest of Shri Rajgopalan Sridhar the other two Directors were Shri K. Rajagopalan Iyer aged about 70 years and Mrs. Dahuram Sridhar wife of Shri Rajagopalan Sridhar. Shri K. Rajagopalan Iyer could not appear because of his advanced age and even the Director of the company Mrs. Dahuram Sridhar could not attend the proceedings due to ill health. Her medical certificate was furnished. The ld. AR filed affidavit of Mrs. Dahuram Sridhar to support his contentions. The ld. AR submitted that non-appearance of assessee before the authorities below was not deliberate or intentional. The notices could not be received by the assessee as the assessee has shifted its office. The ld. AR submitted that an opportunity may be afforded to the assessee to explain its case, the assessee has good case on merits.

4. Per contra, Shri S.B. Prasad representing the Department vehemently defended the impugned order. The ld. DR submitted that the

assessee never communicated change of address to the Assessing Officer. The Assessing Officer gave ample opportunity by issuing notices on the address mentioned in the return of income. Since, the assessee has shifted its operations from Ahmedabad to Pune without intimating the Assessing Officer, the Assessing Officer cannot be faulted for invoking the provisions of section 144 of the Act. The ld. DR further contended that even before the Commissioner of Income Tax (Appeals) the assessee has failed to defend the appeal. The assessee has been non-cooperative throughout. The ld. DR prayed for dismissing the appeal of assessee and confirming the order of Commissioner of Income Tax (Appeals).

5. Both sides heard. Orders of the authorities below perused. It is an undisputed fact that the assessee neither appeared before Assessing Officer nor made adequate effort to defend the appeal before the First Appellate Authority. Ostensibly, the assessee has not communicated change in address from Ahmedabad to Pune to the Assessing Officer. Under such circumstances the Assessing Officer had no option but to issue notices on the address available with him. The Assessing Officer issued notices on the address mentioned in the return of income as well as new address of the assessee at Pune. However, the notices were returned back un-served by the postal authority with remarks 'left/NF'. Thus, the Assessing Officer was constrained to proceed u/s. 144 of the Act. Even before the Commissioner of Income Tax (Appeals) after initial representation none appeared at the time of final hearing of first appeal. Mrs. Dahuram Sridhar one of the Directors of assessee company has filed an affidavit stating reasons for non-representation of assessee before the

authorities below. A perusal of affidavit indicate, that the non-appearance of assessee before authorities below was on account of crisis faced by the assessee due to arrest of Director who was actively involved in the conduct as assessee's business and the other Director being in the advanced age.

Taking into consideration entirety of facts and the principles of natural justice, we are of considered view that an opportunity should be afforded to the assessee to represent its case before the authorities below. Consequently, the impugned order is set aside and the issues/additions assailed in appeal are restored back to the file of Assessing Officer for de-novo adjudication. The Assessing Officer shall grant reasonable opportunity of hearing to the assessee, in accordance with law. The assessee is also directed to co-operate and be present during assessment proceedings. It is made clear that if the assessee fails to appear before the Assessing Officer, the Assessing Officer is at liberty to take adverse view. Thus, the appeal of assessee is allowed for statistical purpose with the aforesaid directions.

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

**ITA No. 3043/AHD/2013**

7. The assessee in appeal has assailed the order of Commissioner of Income Tax (Appeals) in confirming penalty levied u/s. 271(1)(c) of the Act, in respect of additions made by Assessing Officer in assessment order dated 30-12-2010 passed u/s. 144 of the Act for assessment year 2008-09. Since, we have set aside the additions in quantum proceedings, the penalty

levied u/s. 271(1)(c) on such additions does not survive. Consequently, the impugned order is set aside and the appeal of assessee is allowed.

8. To sum up, the appeal of assessee in ITA No. 3042/AHD/2013 is allowed for statistical purpose and ITA No. 3043/AHD/2013 is allowed.

Order pronounced on Thursday, the 19<sup>th</sup> day of March, 2019.

Sd/-	Sd/-
(डी. करुणाकरा राव/D. Karunakara Rao)	(विकास अवस्थी / Vikas Awasthy)
लेखा सदस्य / ACCOUNTANT MEMBER	न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 19<sup>th</sup> March, 2019  
RK

**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)-6, Ahmedabad
4. आयकर आयुक्त / The CIT-1, Ahmedabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,  
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति // True Copy//

आदेशानुसार / BY ORDER,

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