

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'F' NEW DELHI**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER**

**ITA No.2793/Del/2019
Stay Application No.465/Del/2019
Assessment Year: 2014-2015**

ANM Fincap Pvt. Ltd.,
Shop No.9, Plot No.51, Block C,
Mahendru Enclave, GTK Road,
New Delhi.
PAN: AAACA9489Q

vs Income-tax Officer,
Ward 2(4), New Delhi

**Assessee by
Revenue by**

**Shri Suresh K. Gupta, CA
Smt. Ashima Neb, Sr. DR**

**Date of Hearing 11.04.2019
Date of Pronouncement 12.04.2019**

ORDER

PER K. NARASIMHA CHARY, JM:

Aggrieved by the order dated 19.3.2019 in Appeal No.260/17-18 of the Commissioner of Income-tax (Appeals)-32, New Delhi {"Ld. CIT(A)}, assessee preferred ITA No.2793/Del/2019 and pending disposal of the appeal, he sought stay of demand to the tune of Rs.2,60,940/- in Stay Application No.465 of 2019.

2. At the outset, learned AR submitted that the impugned of the learned CIT(A) is an ex parte order and no proper opportunity was afforded to the assessee to put forth their case with evidence and therefore, the stay may be granted. In the alternative, he submitted that if for any reason, the Bench is not inclined to grant stay, he is ready to proceed with the appeal. We heard the learned DR also.

3. On a perusal of the impugned order, it is clear that the ld. CIT(A) vide para 4 enumerated events that took place in the appeal and recorded a finding that though the assessee had been provided reasonable number of opportunities, the assessee had not chosen to avail the same and, therefore, drawing an inference that the assessee had been non cooperative and placing reliance on the decision of the Hon'ble Gujarat High Court in the case of PCIT vs Ashokji Chanduji Thakor in ITA No.710/2018, dismissed the appeal in limine.

4. Learned DR submitted that the assessee had been non cooperative with the disposal of the appeal on merits and, therefore, ld. CIT(A) is justified in dismissing the appeal whereas learned AR submitted that though the assessee in Form No.35 submitted its address as "B-58, Gujranwala Town, Stadium Road, Part-1, New Delhi but subsequently, the vide letter dated 28.6.2007, they have informed their new address as

“Shop No.9, Plot No.51, Block-C, Mahendru Enclave, Delhi - 110033”.He further submitted that though notice dated 29.8.17, 25.9.17 and 21.11.17 were send to the new address, the first appellate authority lost the sight of this change of address while issuing notice dated 12.3.19 fixing the date of hearing as 18.3.2019. he submitted that the assessee received the notice though addressed to earlier one on 18.3.2019 itself and therefore, by way of email on 18.3.2019, the assessee made a request for adjournment and further stated that the registered address of the company was shifted to Shop No.9, Plot No.51, Block-C, Mahendru Enclave, Delhi -110033. It is the submission of the learned AR that since the notice was received and the email was issued on 18.3.2019 itself, perhaps ld. CIT(A) did not have noticed the email and resulting in the passing of the ex parte order.

5. In so far as the facts are concerned, there is and cannot be any dispute. The very fact that three notices were issued to the new address of the assessee indicate that the assessee informed the change of address. As rightly submitted by the learned AR, perhaps by mistake, the notice dated 12.3.19 was issued to the old address and it is also possible that since the assessee received the notice on 18.3.2019, as is evident from the endorsement on the speed post envelop and email was issued on

18.3.2019 requesting for adjournment. The impugned order does not indicate the knowledge of the Id. CIT(A) of the email sent by the assessee and perhaps that is the reason why an ex parte order was passed.

6. In these circumstances, we are of the considered opinion that the assessee does not stand to gain by remaining ex parte and it seems a bona fide mistake occurred in issuance of notice to a wrong address. On this premise, we are of the opinion that this is a fit case to set aside the impugned order and remand it back to the file of the Id. CIT(A) for disposal on merits in which event the Stay Application becomes infructuous. We, therefore, set aside the impugned order and remand the matter to the file of the Id. CIT(A) for disposal of the appeal on merit after issuing notice to the assessee on correct address.

7. In the result, appeal is the assessee is allowed for statistical purposes and the Stay Application is dismissed being infructuous.

Order pronounced in the Open Court on.12.04.2019.

Sd/-
(N.K. BILLAIYA)
ACCOUNTANT MEMBER

sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Dated: 12th April, 2019
VJ

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

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