



**आयकर अपीलीय अधिकरण “ए” न्यायपीठ मुंबई में।  
IN THE INCOME TAX APPELLATE TRIBUNAL  
“A” BENCH, MUMBAI**

**माननीय श्री सी. एन. प्रसाद, न्यायिक सदस्य एवं  
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।  
BEFORE HON'BLE SHRI C.N. PRASAD, JM AND  
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM**

आयकर अपील सं./ I.T.A. No.6001/Mum/2018  
(निर्धारण वर्ष / Assessment Year: 2006-07)

<b>Smt. Laxmi A. Shetty</b> 704, Priyadarshini Park Om Nagar, D.P. Road Sahar Village, Andheri (E) Mumbai-400 059.	<b>बनाम/ Vs.</b>	<b>Income tax Officer-20(1)(4)</b> Mumbai.
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. <b>AYWPS-0408-E</b>		
(□ पीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

<b>Assessee by</b>	:	Shri Snehal R. Shah- Ld. AR
<b>Revenue by</b>	:	Shri Abdul Hakeem M - Ld.DR

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	30/04/2019
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	03/05/2019

**आदेश / ORDER**

**Per Manoj Kumar Aggarwal (Accountant Member)**

1. Aforesaid appeal by assessee for Assessment Year [AY] 2006-07 contest the order of Ld. Commissioner of Income-Tax (Appeals)-36, Mumbai [CIT(A)], *Appeal No. CIT(A)-31/IT-310/ITO-20(1)(4)13-14* dated 06/05/2015 on following Grounds of appeal: -

1. The Ld CIT (A)-36 has erred in confirming the order passed by the learned Assessing Officer 20(1)(4), Mumbai without appreciating the fact of the case in the right perspective.
2. The Ld. CIT(A)-36 failed to appreciate that the Ld. Assessing Officer has grossly erred in passing order u/s 144 r.w.s 147 of the Act 1961 even without



- appreciating the fact that the appellant is regular in filing return of income year on year.
3. The Ld. Assessing Officer has erred in concluding that the appellant has not filed any return of income for the year under reference despite the fact that the appellant has actually filed the return of income on 15.04.2008 for the year under reference.
  4. The learned Assessing Officer has erred in stating that the appellant has not filed the return of income for AY 2005-06 despite the fact that the notice issued u/s 148 pertains to AY 2006-07 and not AY 2005-06 as erroneously referred by him.
  5. The Ld. CIT(A)-36 has merely relied on the order passed by the Ld. Assessing Officer who failed to appreciate that the appellant has through his representative CA Dinesh Shah, had specifically attended the hearing and requested the Ld. Assessing Officer to treat the return filed u/s 139(1) on 15.04.2008 as a response to notice u/s 148 of the Act, 1961 and had further failed to give the copy of the reasons recorded and the copy of the approval sought by him.
  6. The learned Assessing Officer has erred in confirming an addition of Rs.40,00,000/-, by erroneously treating the purchase of property as Unexplained Investments without appreciating the facts of the case in right perspective.

2.1 Facts in brief are that the assessee being *resident individual* was assessed for impugned AY on *best judgment basis* u/s. 144 r.w.s. 147 of the Act on 04/03/2014 wherein the income of the assessee was determined at Rs.40.00 Lacs. The re-assessment proceeding was triggered upon formation of belief that the assessee entered into property transaction for Rs.40.00 Lacs during the impugned AY, the source of which remained unexplained. It was also noted that the assessee did not file original return of income for the impugned AY since the assessee neither filed the copy of acknowledgement of the return of income nor filed any reply to notice dated 07/12/2012. Accordingly, notice u/s 148 was issued on 05/03/2013 after requisite approvals which was followed by notice u/s 142(1). However, the assessee failed to respond to the said notices and did not attend the assessment proceedings.

2.2 In the above background, Ld. AO proceeded to determine the income of the assessee on *best judgment basis* us/ 144 and



accordingly, the aforesaid investment of Rs.40 Lacs was added to the income of the assessee as unexplained investment u/s 69.

3. Although the assessee preferred appeal against the same, however, the conduct of the assessee, remained more or less the same since the assessee failed to attend the appellate proceedings on various occasions, which have already been tabulated at *para 2* of the impugned order. Resultantly, the addition was confirmed, against which the assessee is in further appeal before us.

4.1 The Ld. Authorized Representative for Assessee [AR], at the outset, drawing our attention to the documents placed in the *paper-book*, submitted that reassessment proceedings have been initiated on erroneous assumption of facts since the assessee had, in fact, filed the return of income for impugned AY on 15/04/2008 wherein the stated investments were reflected in the *Balance Sheet* of the assessee. Our attention is drawn to the fact that opening line of quantum assessment order record a finding that the return of income for AY 2005-06 has not been filed by the assessee whereas the AY under question is AY 2006-07.

4.2 It was further submitted that the assessee purchased *Shop Nos. 9 & 10, Ground Floor, Sai Udyan Co-op. Hsg. Society Ltd., Plot No.25, Sector-14, Vashi, Navi Mumbai* for a consideration of Rs.42.30 Lacs which was partly financed by way of loan from Vijaya Bank for Rs.36 Lacs and the balance amount was paid out of family savings over the years. Our attention is further drawn to the fact that the said property was sold by the assessee during AY 2007-08 and the gains / losses were duly reflected in return of



income for AY 2007-08 which was filed on 20/01/2009. Therefore, there could be no occasion to consider the investment as unexplained investment. Our attention has been drawn to the supporting documents placed in the *paper-book*. In the above background, the Ld. AR pleaded to quash the reassessment proceedings and delete the impugned addition.

The Ld. DR controverted the same by drawing our attention to the fact that the assessee failed to represent his case before any of the lower authorities and therefore, the matter may be remanded back for reconsideration.

5. Upon careful consideration, it transpires that the assessee has remained negligent in attending the assessment proceedings as well as appellate proceedings. All the submissions made before us were never placed for consideration of lower authorities which is evident from the fact that the assessment was framed on *best judgment basis* u/s 144. Therefore, keeping all the issues open, we remit the matter back to the file of Ld. AO for re-adjudication with a direction to the assessee to substantiate his stand failing which the Ld. AO shall be at liberty to proceed with the matter on the basis of material on record.

6. Resultantly, the appeal stands allowed for statistical purposes.

*Order pronounced in the open court on 03<sup>rd</sup> May 2019.*

**Sd/-**

**(C.N. Prasad)**

न्यायिक सदस्य / **Judicial Member**

**Sd/-**

**(Manoj Kumar Aggarwal)**

लेखा सदस्य / **Accountant Member**



मुंबई Mumbai; दिनांक Dated : 03/05/2019  
Sr.PS, Jaisy Varghese

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)  
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.