



IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER

ITA no.7156/Mum./2017
(Assessment Year : 2010-11)

Shri Chandrakant Krishnaji Ingawale
4/704, Shree Swami Krupa Co-operative
Housing Society, Kolshet Road
Dhokali, Thane (W), Thane 400 607
PAN – AABPI0404R

..... Appellant

v/s

Income Tax Officer
Ward-1(3), Thane

..... Respondent

Assessee by : Shri Hardik Sethia
Revenue by : Shri Abhi Rama Kartikeyan

Date of Hearing – 08.05.2019

Date of Order – 15.05.2019

ORDER

PER SAKTIJIT DEY. J.M.

The aforesaid appeal has been filed by the assessee challenging the order dated 17th November 2016, passed by the learned Commissioner (Appeals)-1, Thane, for the assessment year 2010-11.

2. In ground no.1, the assessee has challenged the impugned order of the learned Commissioner (Appeals) to have been passed in violation of rules of natural justice.

3. Brief facts are, the assessee, an individual, is engaged in the activity of builder and developer. The return of income filed for the impugned assessment year was initially processed under section 143(1) of the Income Tax Act, 1961 (for short "*the Act*"). Subsequently, the assessment was re-opened under section 147 of the Act and in the course of re-assessment proceedings, the Assessing Officer called upon the assessee to reconcile the difference in opening and closing stock. As observed by the Assessing Officer, in response to the notice issued by him, the assessee neither appeared nor filed any evidence to reconcile the difference. Thus, ultimately, the Assessing Officer proceeded to complete the assessment under section 144 r/w section 147 of the Act to the best of his judgment and determined the total income at ₹ 2,59,75,480.

4. Being aggrieved with the assessment order so passed, the assessee preferred appeal before the first appellate authority challenging the validity of re-opening of assessment under section 147 of the Act as well as the addition made. As could be seen from the observations of learned Commissioner (Appeals) since the assessee failed to appear on the date appeal was fixed for hearing, he proceeded to dispose of the appeal ex-parte. Stating that the assessee did not file any documentary evidence to reconcile the difference in stock, he sustained the addition made by the Assessing Officer.

Further, he also rejected assessee's ground challenging the re-opening of the assessment.

5. We have considered rival submissions and perused the material on record. Before us, it is contended on behalf of the assessee that due to unavoidable circumstances, the assessee could not appear before the first appellate authority which resulted in dismissal of the appeal ex-parte. It is submitted, given an opportunity, the assessee would properly represent its case before learned Commissioner (Appeals).

6. Learned Departmental Representative on the other hand submitted that the assessee did not avail the opportunities given to him resulting in ex-parte disposal of the appeal.

7. Having considered rival submissions, we have noticed that the assessee had neither represented his case properly before the Assessing Officer nor before learned Commissioner (Appeals). Therefore, to some extent, the assessee is responsible for ex-parte disposal of its appeal. However, taking a lenient view and in the interest of justice, we are inclined to grant one more opportunity to the assessee to represent his case before learned Commissioner (Appeals) by furnishing proper documentary evidence to reconcile the difference in stock. To enable the assessee to do so, we set aside the

impugned order of the learned Commissioner (Appeals) and restore all the issues raised in the present appeal, including the issue relating to the validity of re-opening of assessment under section 147 of the Act, for de novo adjudication by learned Commissioner (Appeals). Needless to mention, learned Commissioner (Appeals) must afford reasonable opportunity of being heard to the assessee before deciding the issue. At the same time, the assessee is also directed to respond to the notice of hearing to be issued by learned Commissioner (Appeals) and co-operate in finalising the appeal proceedings. With the aforesaid observations, grounds are allowed for statistical purposes.

8. In the result, appeal is allowed for statistical purposes.

Order pronounced in the open Court on 15.05.2019

Sd/-
MANOJ KUMAR AGGARWAL
ACCOUNTANT MEMBER

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 15.05.2019

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

(Assistant Registrar)
ITAT, Mumbai