

आयकर अपीलीय अधिकरण, पुणे न्यायपीठ “एक-सदस्य मामला” पुणे में
**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH “SMC”, PUNE**

श्री डी. करुणाकरा राव, लेखा सदस्य के समक्ष
BEFORE SHRI D. KARUNAKARA RAO, AM

आयकर अपील सं. / ITA Nos.1870 & 1871/PUN/2019
निर्धारण वर्ष / Assessment Years : 2002-03 & 2004-05

Seema Sanjay Gadiya,
Flat No.28, Sai Sayaji Tower,
Renuka Nagari, Warje,
Pune-411058.

PAN : ADLPS5842G

.....अपीलार्थी / Appellant

बनाम / V/s.

ITO, Ward-2(1),
Pune.

.....प्रत्यर्थी / Respondent

Assessee by : Shri Pratik B. Sandbhor
Revenue by : Shri S. P. Walimbe

सुनवाई की तारीख / Date of Hearing : 31.01.2020
घोषणा की तारीख / Date of Pronouncement : 05.02.2020

आदेश / ORDER

PER D. KARUNAKARA RAO, AM:

There are **two appeals** under consideration. Both the appeals are directed against the common orders of CIT(A)-3, Pune dated 03.07.2019 for the Assessment Years 2002-03 and 2004-05.

2. Deviating from the grounds, ld. Counsel for the assessee requested for **remanding the issues** to the file of the CIT(A) and prayed for grant of one more round before the CIT(A). Further, ld. Counsel submitted that this is already the second round of the proceedings before the Tribunal. In the

first round of proceedings, the Tribunal remanded the issues to the file of CIT(A) with direction to consider the **“additional evidence”** furnished by the assessee before the first appellate authority and adjudicated the issues afresh. As per the procedure, the CIT(A) issued notices of hearing for adjudication of the issues. The CIT(A) attempted to serve the notices on the assessee at four different dates. In this regard, ld. Counsel submitted that the said notices were not served on the assessee directly. The said notices actually were served on Mr. Sanjay Gandhi, who was an earlier Authorised Representative of the assessee and who does not have power of attorney to represent the present cases. Mr. Gandhi never took interest. Subsequently, the assessee appointed Mr. S. N. Doshi to be the counsel/Authorized Representative. However, the notices were not served on Mr. Doshi in this phase of developments. Thus, the appeal was heard without proper representation. Aggrieved with the said decision of the CIT(A) in rejecting the claim of the assessee, the assessee filed the present appeals before the Tribunal.

3. Before me, explaining the reasons for non-attendance before the CIT(A) in the second round of proceedings, ld. Counsel for the assessee filed an affidavit. The contents of para (F) to (R) of the said affidavit are relevant and the same are extracted hereunder :-

“F. That a notice was issued by the CIT(A) on 23/02/2017 vide email. But the affiant is not aware of any such email from the CIT(A).

- G. *That subsequently notice for hearing of appeal was issued by the CIT(A) vide RPAD on 01/05/2018 which was returned unserved with legend 'Left'.*
- H. *That the affiant used to live with her in laws at the address in the records of revenue i.e. A/25, Rajashree Shahu Society, Pune Satara Road, Pune - 411037. Subsequently in 2012 due to family needs the affiant along with her spouse and children moved to new address i.e. Flat No. 29, Sai Sayaji Tower, Renuka Nagari, Warje, Pune - 411 058.*
- I. *That the affiant's in laws moved to live at their native place in Nashik and stayed at the old address as mentioned above whenever in Pune. The income tax notices issued to the affiant were accordingly returned unserved in the absence of the affiant's in laws.*
- J. *That the Id. CIT(A) subsequently served the notice through notice server on Mr. K T Gandhi who initially represented the matter before the CIT(A) in the first round of appeals but did not possess any Power of Attorney to appear in the said matters in second round of appeals.*
- K. *That Mr. K T Gandhi tried to contact the affiant but failed to do so and therefore the affiant was not communicated of the notices received from the Id. CIT(A). Subsequently when the affiant's spouse met Mr. K T Gandhi somewhere in January 2019, he informed him of the receipt of notice from the CIT(A).*
- L. *That the affiant's spouse visited her Counsel CA S. N. Doshi and informed him about the receipt of notice.*
- M. *That the final notice of hearing dated 07/05/2019 was not served on the affiant and the CIT(A) disposed of the matter ex parte.*
- N. *That on receipt of the order of CIT(A) dated 03/07/2019 the affiant's spouse approached her Counsel's office when they were made aware of his demise.*
- O. *That the affiant's spouse visited the office of her counsel number of times to obtain the records from the office.*
- P. *That the affiant aggrieved by the said order also filed an appeal before the Hon'ble ITAT, Pune seeking an opportunity to represent her case.*
- Q. *That the records of the affiant being very old could not be traced from the office of the Counsel and substantial amount of time was consumed in reiving the same. The records could be received and compiled by the affiant only in the third week of January 2020 after a long follow up.*
- R. *That the affiant has not been able to appear before the Id. CIT(A) since the notice was unfortunately not communicated to the affiant and that the affiant was not aware of the demise of her Counsel."*

4. Mentioning that the matter may be remanded to the file of the CIT(A) in view of the principles of natural justice, ld. Counsel for the assessee submitted that the assessee is ready to pay a nominal cost of Rs.5,000/- as a fine. Further, ld. Counsel made a statement at Bar that this time the assessee would make proper representation before the lower authorities and pleaded for grant of one more opportunity of being heard to the assessee.

5. On hearing both the sides and also the assessee present in the Court in person, I am of the opinion that the principles of natural justice demand the matter should be heard fully and complete. I have also noticed that at this time, the assessee promised in the Court to intimate the change of address to the concerned authority, if any, at the earliest and made a statement at Bar to attend the proceedings before the First Appellate Authority. Accordingly, the CIT(A) is directed to adjudicate all the issues raised in the grounds and decide the same as per the provisions of section 250(6) of the Act. In case of any failure on the part of the assessee in the matter of attendance, the first appellate authority is free to pass the decision on the basis of merits of the case as per the procedure laid down in the Act. Assessee is directed to pay the cost of Rs.5,000/- to the Prime Minister Relief Fund and produce evidence of payment to the CIT(A). Accordingly, all the grounds raised by the assessee in both the appeals are allowed for statistical purposes.

6. In the result, both the appeals of the assessee are allowed for statistical purposes.

Order pronounced on this 05th day of February, 2020.

Sd/-
(D. KARUNAKARA RAO)
लेखा सदस्य / ACCOUNTANT MEMBER

पुणे / Pune; दिनांक Dated : 05th February, 2020.
Sujeet

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A)-3, Pune;
4. The Pr. CIT-2, Pune;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "एक-सदस्य मामला" / DR 'SMC', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune