

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC" MUMBAI**

**BEFORE SHRI VIKAS AWASTHY (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 102/MUM/2019
Assessment Year: 2009-10**

Smt. Saroj Pankaj Bhandari,
220, 'B' Wing, Tower 1, Ashok
Garden, Tokersi Jivraj Road,
Sewree (W), Mumbai-400015.

Vs. Income Tax Officer-17(1)(1),
Piramal Chamber, Lalbaug,
Mumbai-400012.

**PAN No. AFHPB0922L
Appellant**

Respondent

Assessee by : Mr. Satish R. Mody, AR
Revenue by : Mr. Dharm Veer Singh, DR

Date of Hearing : 13/01/2020
Date of pronouncement : 22/01/2020

ORDER

PER N.K. PRADHAN, A.M.

This is an appeal filed by the assessee. The relevant assessment year is 2009-10. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-32, Mumbai [in short 'CIT(A)'] and arises out of the penalty levied u/s 271(1)(c) of the Income Tax Act 1961, (the 'Act').

2. Briefly stated, the facts of the case are that the assessee filed her return of income for the assessment year (AY) 2009-10 on 31.07.2009 declaring total income of Rs.6,34,700/-. The Assessing Officer (AO) completed the assessment u/s 143(3) r.w.s. 147 on 29.01.2014 by making addition of Rs.14,57,558/- on account of cash credit. Thereafter, the AO levied a minimum penalty of Rs.4,81,203/- u/s 271(1)(c) with a finding

that the assessee had furnished inaccurate particulars of income of Rs.14,57,558/-.

3. Aggrieved by the penalty levied by the AO, the assessee filed an appeal before the Ld. CIT(A). We find that *vide* order dated 02.08.2018, the Ld. CIT(A) dismissed the appeal filed by the assessee for the reason that though the case was posted on several occasions, there was no compliance by the assessee.

4. Before us, the Ld. counsel for the assessee submits that a fair opportunity should have been given to the appellant by the Ld. CIT(A) and that the case be decided on merits.

On the other hand, the Ld. Departmental Representative (DR) submits that reasonable opportunity of being heard was given to the assessee by the Ld. CIT(A). He refers to para 4 of the impugned order. Thus it is submitted by him that there is no merit in the contentions of the assessee asking for more reasonable opportunity.

5. We have heard the rival submissions and perused the relevant materials on record. In the instant case, the Ld. CIT(A) has mentioned at para 4 that there was no compliance by the assessee before him on 22.05.2015, 08.02.2018 and 05.04.2018. In respect of the date of hearing on 05.02.2018, the Ld. CIT(A) has mentioned "Appellant filed adjournment letter saying the Accountant" which is not complete. From the order of the Ld. CIT(A), it is not clear whether the notices issued by him fixing the case for hearing were served on the assessee or not.

In view of the above facts, we set aside the order of the Ld. CIT(A) and restore the matter to him to make an order afresh, after giving reasonable opportunity of being heard to the assessee. We direct the

assessee to file the relevant documents/evidence and appear before the Ld. CIT(A).

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

Order pronounced in the open Court on 22/01/2020.

Sd/-

Sd/-

(VIKAS AWASTHY)
JUDICIAL MEMBER

(N.K. PRADHAN)
ACCOUNTANT MEMBER

Mumbai;

Dated: 22/01/2020

Biswajit, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai