



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

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER**

ITA no.5139/Mum./2018  
(Assessment Year : 2007-08)

Vandana V. Agarwal  
301, Kakukunj, 3<sup>rd</sup> Nexbit Road  
Mazgaon, Mumbai 400 051  
PAN – ACAPA6320P

..... Appellant

v/s

Income Tax Officer  
Ward-20(3)(5), Mumbai

..... Respondent

Assessee by : None  
Revenue by : Ms. R. Kavitha

Date of Hearing – 19.02.2020

Date of Order – 13.03.2020

**ORDER**

This appeal has been filed by the assessee challenging the order dated 31<sup>st</sup> May 2018, passed by the learned Commissioner of Income Tax (Appeals)-32, Mumbai, for the assessment year 2007-08.

2. When the appeal was called for hearing, none appeared on behalf of the assessee despite issuance of notice. There is no application seeking adjournment either. It is also noticed that on earlier occasion also no one appeared on behalf of the assessee as a result of which the appeal got adjourned and a fresh hearing notice was issued to the assessee. In spite of this, the assessee has again failed to appear

before us. Thus, from the aforesaid facts it is clear that the assessee is neither diligent nor interested in pursuing the present appeal. Accordingly, we proceed to dispose off the appeal ex-parte qua the assessee after hearing the learned Departmental Representative and on the basis of material available on record.

3. The dispute in the present appeal is confined to the addition made on account of unexplained investment arising out of alleged sale of bogus shares. Further, the Assessing Officer has also added commission derived by the assessee on such transaction.

4. Brief facts are, the assessee is an individual and derives income from salary, interest on capital, share of profit in partnership firm and profit on purchase and sale of shares. For the assessment year under dispute, the assessee filed her return of income in the regular course declaring total income of ₹ 1,24,977. The return of income was initially processed under section 143(1) of the Act. Subsequently, on the basis of information received by the Assessing Officer that the assessee has obtained bogus accommodation bills from certain tainted companies/entities to claim income/loss from capital gain, the Assessing Officer re-opened the assessment under section 147 of the Act. In the course of assessment proceedings, the Assessing Officer having found that the assessee is one of the beneficiaries of the accommodation entries as it has entered into share transaction

through Alliance Intermediaries and Network Pvt. Ltd., an entity controlled by Mukesh Choksi, called upon the assessee to prove genuineness of such transaction. In response, the assessee submitted broker's note for the transaction carried out through Alliance Intermediaries and Network Pvt. Ltd. However, relying upon the statement recorded under section 132(4) of the Act, from Mukesh Choksi, wherein, he admitted that he and his group entities were providing accommodation entries as well as some other information, the Assessing Officer concluded that the share transaction from which the assessee has offered the capital gain / loss is non-genuine and is a bogus transaction. Accordingly, he added the capital gain shown by the assessee amounting to ₹ 2,11,287, as unexplained investment and further added 2% thereon towards payment of commission. Thus, in aggregate, the Assessing Officer added an amount of ₹ 2,15,513. The assessee challenged the aforesaid addition before the first appellate authority.

5. Since on the date fixed for hearing of appeal no one appeared on behalf of the assessee to represent the case, learned Commissioner (Appeals) disposed off the appeal ex-parte by dismissing it without deciding the grounds raised by the assessee on merits.

6. We have considered the submissions of learned Departmental Representative and perused the material on record. No doubt, on a

perusal of the impugned order of learned Commissioner (Appeals), it appears that despite being given sufficient opportunity to represent her case, the assessee repeatedly sought adjournment without appearing before the first appellate authority. In such circumstances, though, learned Commissioner (Appeals) might be justified in disposing off the appeal ex-parte, however, it is very much clear that he has not decided the appeal on merits. It may be a fact that due to non-appearance of the assessee, learned Commissioner (Appeals) is well within his rights to dispose off the appeal ex-parte, however, as per the mandate of section 251 of the Act, learned Commissioner (Appeals) has to decide the appeal on merits. In the facts of the present case, it is evident, learned Commissioner (Appeals) has dismissed assessee's appeal without deciding the issues raised therein on merits. For this reason alone, the impugned order of learned Commissioner (Appeals) cannot be sustained. Therefore, we set aside the impugned order of learned Commissioner (Appeals) restore the issues back to his file for de novo adjudication after providing reasonable opportunity of being heard to the assessee. The assessee is also directed to comply with the hearing notice to be issued by the first appellate authority and represent her case properly. In the event of any failure on the part of the assessee to represent her case, learned Commissioner (Appeals) would be at liberty to dispose off the appeal on merits on the basis of material on record and in accordance with

law. Grounds raised by the assessee are allowed for statistical purposes.

7. In the result, appeal is allowed for statistical purposes.  
Order pronounced in the open Court on 13.03.2020

**Sd/-**  
**SAKTIJIT DEY**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 13.03.2020**

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