

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI 'SMC- I' BENCH, MUMBAI**

[Coram: Pramod Kumar (Vice President)]

ITA No.1796/Mum/2019
Assessment year: 2007-08

Shri Pinal D Shah

83, Arpan Apartment, Babunivas Street,
Nanpura Timlawas, Surat 395001
Gujarat
[PAN:AHEPS6429E]

..... Appellant

Vs

Income Tax Officer 25(3)(3)
Mumbai

.....Respondent

Appearances by

None for the appellant

Samatha Mullamudi for the respondent

Date of concluding the hearing: : June 09th, 2020
Date of pronouncement : July 09th, 2020

ORDER

Per Pramod Kumar, VP:

1. By way of this appeal, the assessee appellant has challenged correctness of the order dated 18th February 2015, passed by the CIT(A) for the assessment year 2007-08.

2. Grievances raised by the appellant are as follows:-

1. On the facts and circumstances of the case and in law the Ld CIT(A) erred in confirming the initiation of the reassessment proceeding under section 147. On the facts and circumstances of the case and in law the Ld CIT(A) failed to consider that reassessment proceeding cannot be initiated.

a) No reassessment can be made just to make an enquiry or verification.

b) Reassessment proceeding cannot be initiate merely on the information received from investigation wing.

c) Reassessment proceeding cannot be initiated when the LD. CIT(A) have reason to suspect and not reason to believe.

2. On the facts and circumstances of case and law the Ld CIT(A) erred in confirming the assessment order under section 144 r w s 147 of income tax Act which is passed against the principal of natural justice.

3. On the facts and circumstances of the case the Ld CIT(A) erred in confirming the addition the Rs.90,360/-on account of deemed rent from residential property and added the same as to the total income of the assessee.

4. On the facts and circumstances of the case the Ld. CIT(A) erred in confirming the computed unexplained gift received by the assessee of Rs.82,250/- and thereby erred in confirming the addition made by the AO to the total income of the assessee.

5. On the facts and circumstances of the case the Ld. CIT (A) erred in confirming the genuine unsecured loan of Rs.4,50,000/- received from Shri Sanjay Gandhi and thereby erred in confirming the addition made by the AO to the total income of the assessee.

6. The Ld. CIT(A) erred in confirming the charging of interest Disallowed under section 234A, 234B 234C and 234D of the Income Tax Act 1961.

7. The Ld. CIT(A) erred in confirming the initiation of the Disallowed penalty proceeding under section 274 r.w.s. 271(1)(c) of the Income Tax Act 1961.

3. When this appeal was taken up for the hearing, it was noticed that the learned CIT(A) has summarily dismissed the matter ex parte by observing as follows:-

The assessee is in appeal against all these additions. However despite fixing the case for hearing on a number of occasions no one has appeared nor any explanation/written submission filed to substantiate the grounds of appeal. Therefore in the appeal filed is hereby dismissed.

4. Learned CIT(A) did not deal with the facts as set out in the statement of facts filed before him, or with the grounds of appeal before him. It is only elementary that irrespective of whether someone appears before him to plead for the appeal, an appeal is to be decided on merits in the light of material on record. Obviously, that exercise is not carried out in the impugned order.

5. Explaining the position as learned Departmental Representative was asked whether he has any objection to the matter being set aside to the file of the CIT(A) for adjudication de nova, after giving yet another opportunity of hearing to the assessee, and in the light of, inter alia, material on record. Learned Departmental Representative graciously leaves the matter to the bench.

6. In view of the above discussions, I deem it fit and proper to remit the matter to the file of the CIT(A) for adjudication with direction as above. Ordered, accordingly.

7. In the result, the appeal is allowed for statistical purposes, in the terms indicated above. Order pronounced under rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1962, by placing the details on the notice board.

Sd/-

Pramod Kumar
(Vice President)

Mumbai, dated the 09th day of July, 2020

Nishant Verma Sr.PS

Copies to: (1) *The appellant* (2) *The respondent*
 (3) *CIT* (4) *CIT(A)*
 (5) *DR* (6) *Guard File*

By order

Assistant Registrar
Income Tax Appellate Tribunal
Mumbai benches, Mumbai