

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI FRIDAY BENCH 'E' : NEW DELHI  
(Through Video Conferencing)**

**BEFORE SHRI G.S. PANNU, VICE PRESIDENT AND  
SHRI K.NARASIM HA CHARY, JUDICIAL MEMBER**

**ITA No. 1350/Del/2020  
Assessment Year : 2014-15**

**MANJU AGARWAL,  
F-4, ANAND NIKETAN,  
SOUTH CAMPUS,  
NEW DELHI  
(PAN: AAIPA6402A)  
(Appellant)**

**Vs. ITO, WARD 70(1),  
NEW DELHI**

**(Respondent)**

Appellant by : Sh. Shaubhagya Agarwal, CA  
Respondent by : Sh. Saras Kumar, Sr. DR.

Date of hearing : 07.08.2020  
Date of pronouncement : 07.08.2020

**ORDER**

**PER K.N. CHARY, JM :**

Aggrieved by the Order dated 28/8/2019 in Appeal No. 224/18-19/1252 passed by the Ld. Commissioner of Income Tax (Appeals)-28, New Delhi (Ld. CIT(A)) for the assessment year 2014-15 in the case of Ms. Manju Agarwal (the 'Assessee'), this Appeal is preferred by the Assessee.

2. Brief facts of the case are that the assessee is an individual and

filed the return of income on 29/7/2014 declaring an income of Rs. 6,09,430/-. Assessment under section 143(3) of the Income Tax Act, 1961 (for short "the Act") was, however, was completed at Rs. 89,74,672/-after making an addition of Rs. 83,65,244/-under section 68 of the Act. Assessee preferred an appeal before the Ld. CIT(A) but due to the absence of the assessee touring the 1<sup>st</sup> appellate proceedings, Ld. CIT(A) proceed ex parte and decided the appeal against the assessee. Aggrieved by such an order, assessee is before us in this appeal.

3. At the outset it is pleaded before us that the assessee is suffering from cancer quite for some time, due to which she had to frequently visited her Dr further radiation and other medical therapy, from time to time, at Raju Gandhi Cancer Institute at Rohini, New Delhi and this has caused disruption in her routine life to evince interest. Further it is submitted before us that the Ld. CIT(A) usually email ID as available in the profile of the assessee in IT BA without looking into her correspondence address and email ID as mentioned in form 35. It is brought to our notice that on 3/4/2019 the assessee also had changed her email ID in the profile from [finance.delhi@hotmail.com](mailto:finance.delhi@hotmail.com) to [casaransh.narula@agarwalpacker.com](mailto:casaransh.narula@agarwalpacker.com). Grievance of the assessee has been that added to her misery due to the ill health of cancer, nonissuance of notice to proper address is the reason for are not prosecuting the proceedings before the Ld. CIT(A). Ld. AR submitted that there is no want of due care or caution on the part of the assessee.

4. Ld. DR submitted that the notice issued to the address to be

found in the IT BA is proper notice, and it is for the assessee to take care of the proceedings initiated by her before the Ld. CIT(A).

5. We have gone through the record in the light of the submissions made on either side. Impugned order clear in its purport that since the assessee attended the hearings neither in-person nor of any authorised representatives, learned Ld. CIT(A) found no option but to proceed ex parte. It's not the case of the Revenue that the statement made by the assessee in her affidavit as to her illness or change of email address in the IT BA is false. Further, the assessee does not stand to gain by allowing the appeal to be decided ex parte. It is not the case of the Revenue that the notice was issued to [casaransh.narula@agarwalpacker.com](mailto:casaransh.narula@agarwalpacker.com), which according to the assessee was substituted for the earlier email ID. It is quite probable that the assessee has not received any such notice because, according to her, her earlier email ID was inactive and not access by her staff during the relevant time.

6. Since we do not find anything improbable in the explanation offered by the assessee as to the nonreceipt of notice or the reason for have not being able to prosecute the proceedings before the Ld. CIT(A), we accept the same. Above all, when the technicalities are pitted against the substantial justice, the former must give way to the later. We, therefore, take a view that proper opportunity must be given to the assessee so that the cause would be decided on merits. We, accordingly, set aside the impugned order and remand the issue to the file of the Ld. CIT(A) for disposal according to law, after giving an

opportunity to the assessee by issuing the notice to the email ID now given in the affidavit, i.e., casaransh.narula@agarwalpacker.com. We order accordingly.

7. In the result, the appeal of the assessee is allowed for statistical purpose.

Above decision was pronounced on 7th day of August, 2020.

**Sd/-**  
**(G.S. PANNU)**  
**VICE PRESIDENT**

**Sd/-**  
**(K.NARASIMHA CHARY)**  
**JUDICIAL MEMBER**

Srb  
7.8.2020

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1. Appellant
2. Respondent :
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar