

आयकर अपीलिय अधिकरण  
मुंबई पीठ "एस एम सी"  
IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "SMC", MUMBAI  
श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष  
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER  
आअसं. 3933/मुं/2019 (नि.व.2013-14)  
ITA NO. 3933/MUM/2019 (A.Y.2013-14)

Narailwadi Mosque & Kabristan Trust,  
Ground Floor, 69, Sant Savita Marg,  
Low Level, Mazgaon, Mumbai – 400 010  
PAN: AAATN2257N

: अपीलार्थी/ **Appellant**

**बनाम/** Vs.

Income Tax Officer(Exemption),Ward-2(1),  
Piramal Chambers, Lalbaug,  
Mumbai 400 012

: प्रत्यर्थी/ **Respondent**

**Assessee by** : None  
**Revenue by** : Shri Sanjay J. Sethi

सुनवाई की तारीख/ : 02/12/2020  
**Date of Hearing**  
घोषणा की तारीख / : 14/12/2020  
**Date of Pronouncement**

**आदेश/ ORDER**

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-1, Mumbai ( in short 'the CIT(A)') dated 14/05/2019 for the assessment year 2013-14.

2. The brief facts of the case as emanating from records are: The assessee is a Trust enjoying the benefits of registration under section 12A of the Income Tax Act, 1961 ( in short 'the Act'). The assessee filed its return of income for

assessment year 2013-14 on 24/09/2013 declaring total income as 'Nil'. In scrutiny assessment proceedings the Assessing Officer made addition of Rs.58,170/-. Thereafter, the Assessing Officer invoked the provisions of section 154 of the Act and made further addition/disallowances of Rs.6,60,401/-. In proceedings under section 154 the assessee did not participate despite service of notices. Aggrieved by the order dated 12/09/2017 passed under section 154 of the Act, the assessee filed appeal before the CIT(A) challenging Assessing Officer's jurisdiction invoking the provisions section 154 of the Act to make the additions, as well as assailed the additions/disallowances on merits. The CIT(A) without adjudicating the grounds raised in first appeal by the assessee, dismissed the appeal solely on the ground that the assessee without any bonafide reasons has failed to appear before the Assessing Officer in response to notice issued under section 154/155 of the Act. Hence, the present appeal by the assessee.

3. Shri Sanjay J. Sethi, representing the Department vehemently defending the impugned order submitted that there was an apparent mistake in the assessment order passed under section 143(3) of the Act, therefore, the Assessing Officer invoked the provisions of section 154 of the Act to disallow deductions claimed by the assessee in the return of income. The Id.Departmental Representative further submitted that the Assessing Officer had issued notices under section 154/155 of the Act to the assessee on 06/03/2017 and 24/07/2017, the same were duly served. The assessee failed to respond to said notices. The Assessing Officer had given ample opportunity to the assessee to file objections against invoking of provisions under section 154 of the Act and the proposed additions/disallowances. The assessee

choose not to reply to the notices. Neither the assessee appeared through Id. Authorized Representative nor any written submissions were filed by the assessee before the Assessing Officer. The Id. Departmental Representative prayed for dismissing the appeal of assessee.

4. The submissions made by Id. Departmental Representative heard, orders of authorities below examined. A perusal of the order under section 154 of the Act reveal that the Assessing Officer had issued notices under section 154/155 of the Act on two occasions to the assessee. The assessee failed to respond to those notices. In first appellate proceedings the assessee has challenged the action of Assessing Officer in invoking the provisions of section 154 of the Act, as well as the additions/disallowances made in proceedings under section 154 of the Act. Ostensibly, the assessee filed some submissions/additional evidences before the CIT(A) to substantiate its contentions. However, the CIT(A) out rightly rejected the appeal of assessee on technical ground that the assessee has failed to appear before the Assessing Officer. The CIT(A) simply brushed aside the submissions of the assessee on jurisdictional issue as well merits of the addition. The CIT(A) further recorded that “..... *submissions made by the assessee which dispute the factual aspects of the action of the Assessing Officer in the impugned order cannot be accepted behind the back of the Assessing Officer for granting any relief to the appellant.*” The above observations made by CIT(A) are absolutely unwarranted in the light of fact that the CIT(A) has co-terminus powers to examine the documents furnished by the assessee or the CIT(A) could have under Rule 46A of the Income Tax Rules sought report from the Assessing Officer on the submissions made/documents field by the assessee during first

appellate proceedings. The reasons for rejecting the appeal of the assessee by taking a pedantic view is unsustainable. The impugned order is quashed.

5. The appeal is restored to the file of CIT(A) for deciding the same afresh on merits of the grounds raised by the assessee/appellant in appeal. The assessee is directed to appear before the CIT(A) and co-operate in the proceedings.

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

Order pronounced in the open court on Monday the 14<sup>th</sup> day of December, 2020.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated: 14/12/2020

Vm, Sr. PS(O/S)

**प्रतिलिपि अग्रेषितCopy of the Order forwarded to :**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)

**ITAT, Mumbai**