

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

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND  
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA No. 6103/MUM/2019  
Assessment Year: 2011-12**

Chetna Sanjay Patil, C-1, Indraprasth Building, Bhim Nagar, Trapur Road, Boisar (W), Dist. Palghar - 401501 PAN: AHGPP8098N	<b>Vs.</b>	ITO-Ward 1, Aayakar Bhavan, Income Tax Office, Bidco Road, Tal. & Dist. Palghar - 401404
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by : Shri Subodh Ratnaparakhi (AR)  
Revenue by : Ms. Smita Verma (DR)

Date of Hearing: 28/06/2021  
Date of Pronouncement: 20/07/2021

**ORDER**

**PER SAKTIJIT DEY, JM**

This is an appeal by the assessee against order dated 05.07.2019 of learned Commissioner of Income Tax (Appeals)-3, Thane for the assessment year 2011-12.

2. In this appeal, the assessee has called into question the validity of the assessment order passed under section 143(3) r.w.s. 147 of the Income Tax Act, 1961.

3. We have heard the learned Counsel appearing for the assessee and learned Departmental Representative. It is the specific contention of learned Counsel for the assessee that the impugned assessment order passed is void-ab-initio as before completing the assessment, the Assessing Officer (AO) has not communicated the reasons for reopening the assessment, though, the assessee had specifically asked for it. Whereas, learned Departmental

Representative submitted, though, the AO may not have formally communicated the reasons recorded for reopening of assessment, however, in the notices issued under section 142(1) and 143(2) of the Act, the AO had mentioned the specific charge relating to the escaped income. Thus, the assessee was made aware of the reasons for reopening of assessment. She submitted, the assessee has fully participated in the assessment proceedings and was confronted the adverse material. Therefore, no prejudice is caused to the assessee. Further, she submitted, non-communication of reasons recorded for reopening of assessment is only a procedural irregularity which can be rectified by restoring the matter to the AO for curing the defect. In support of their respective submissions, learned Representative appearing for the parties cited certain judicial precedents.

4. We have considered rival submissions in the light of the decisions relied upon and perused the material on record. At this stage, it is necessary to briefly narrate the relevant facts. The assessee is an individual. For the assessment year under dispute, assessee filed her return of income on 06.09.2011 declaring total income of Rs. 7,83,290/-. Subsequently, a search and seizure operation under section 132 of the Act was carried out in case of M/s Ameya Builder and Property Developers on 31.07.2014. In course of such search and seizure operation, it was found that the assessee has made actual payment of Rs. 25 lacs towards on money for purchasing a flat. Based on such information, the AO reopened the assessment under section 147 of the Act and ultimately passed assessment order by adding back the amount of Rs. 25 lacs. Learned Commissioner (Appeals) also sustained the addition so made. On perusal of facts on record, we find that after receiving the notice issued under section 148 of the Act, the assessee on 28.12.2015 has filed a letter before the AO requesting for communication of reasons recorded for reopening of assessment. The AO vide letter dated 01.01.2016 communicated that the reasons recorded would be supplied once the assessee complies to the notice issued under section 148 of the Act vide letter dated 09.01.2016. The assessee complied with the notice issued under section 148 of the Act and again

requested for communication of reasons recorded for reopening of assessment. However, the AO did not communicate the reasons for reopening of assessment before completing the assessment. The aforesaid factual position has been admitted by the AO in the remand report furnished in course of appellate proceedings before learned Commissioner (Appeals). However, the AO has stated that non-communication of reasons for reopening of assessment is a mere procedural irregularity and not a statutory requirement. Learned Commissioner (Appeals) has also accepted the aforesaid view expressed by the AO. These are the admitted factual position.

5. Thus, the issue arising for consideration is, what is the impact/effect of non-communication of reasons recorded for reopening the assessment. The Hon'ble Jurisdictional High Court in case of CIT vs Videsh Snachar Nigam Ltd. [20212] 340 ITR 66 (Bom) has held that non communication of reasons recorded for re-opening of assessment is a jurisdictional error, hence, make the assessment bad in law. Therefore, no second chance can be given to the AO for rectifying such defect. The same view has also been expressed in case of CIT vs. Trend Electronics (2015) 61 taxmann.com 308 (Bom). Though, learned Departmental Representative has relied upon some non Jurisdictional High Court decisions, however, since, the decisions of the Hon'ble jurisdictional High Court are binding on us, respectfully following the ratio laid down in these decisions, we hold that the impugned assessment order is bad in law as the AO before completing the assessment has not communicated the reasons for reopening of assessment to the assessee. Therefore, the assessment order passed under section 143(3) r.w.s. 147 is quashed. Grounds are allowed.

6. In the result, appeal is allowed.

Order pronounced in the open court on 20<sup>th</sup> July, 2021.

*Sd/-*  
(RAJESH KUMAR)  
ACCOUNTANT MEMBER

*Sd/-*  
(SAKTIJIT DEY)  
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 20/07/2021  
Alindra, PS

**आदेश प्रतिलिपि अग्रेषित/ Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /  
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**