

आयकर अपीलीय अधिकरण  
मुंबई पीठ "एस एम सी", मुंबई  
श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष  
IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "SMC", MUMBAI  
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER  
आअसं. 457/मुं/2020 (नि.व. 2014-15)  
ITA NO.457/MUM/2020 (A.Y.2014-15)

Mrs. Sulakshana Nanche,  
Bungalow No.98, Madhushri,  
Charkop, Sector 1,  
Kandivali West, Mumbai 400 067  
PAN: ACUPN-3354-Q

..... अपीलार्थी /Appellant

बनाम Vs.

The Income Tax Officer – 33(3)(5),  
Kautilya Bhavan,  
Bandra Kurla Complex, Bandra East,  
Mumbai 400 051.

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Ms. Chaitee Londhe

प्रतिवादी द्वारा/Respondent by : Shri Sanjay J. Sethi

सुनवाई की तिथि/ Date of hearing : 28/06/2021

घोषणा की तिथि/ Date of pronouncement : 26/07/2021

आदेश/ ORDER

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals) -45, Mumbai [in short 'the CIT(A)'] dated 23/10/2019 for the assessment year 2014-15.

2. This appeal is time barred by three days. Ms. Chaitee Londhe appearing on behalf of the assessee made oral prayer for condonation of delay. The Id. Authorized Representative for the assessee submitted that the delay in filing of appeal was caused due to wrong calculation of period of limitation. The delay in filing of the appeal is not intentional or for inaction on the part of appellant/assessee.

3. Submissions made by Id. Authorized Representative for the assessee heard. The reason for delay in filing of the appeal appears to be bonafide. Hence, the delay is condoned and the appeal is admitted to be heard and disposed off on merits.

4. The Id. Authorized Representative for the assessee submitted that the impugned order by CIT(A) is an ex-parte order. The CIT(A) has dismissed the appeal for non prosecution. The CIT(A) has also passed the order on merits of the addition. The solitary issue raised in the appeal before the CIT(A) was against adhoc addition of Rs.32,99,494/- made by Assessing Officer under the head Capital Gains. The Id.Authorized Representative of the assessee prayed that an opportunity may be granted to the assessee to place the facts before CIT(A). The assessee has prima-facie good case in her favour. In case an opportunity is given to present the case before the CIT(A), the assessee would be able to make out a favourable case.

5. On the other hand, Shri Sanjay J. Sethi representing the Department submitted that the notice of hearing was issued to the assessee by CIT(A) multiple times. Despite service of notice the assessee failed to appear before the First Appellate Authority , hence, the CIT(A) was constrained to proceed ex-parte.

6. Both sides heard, orders of authorities below examined. A perusal of the impugned order reveals that the CIT(A) has dismissed the appeal primarily for non-prosecution. The Tribunal has time and again held that the CIT(A) has no power to dismiss the appeal for non-prosecution or non-appearance [Re: Creative Casuals vs. Addl.CIT, ITA No.4686/Mum/2009 decided on 27/08/2010]. Once an appeal under section 246A of the Income Tax Act, 1961 (in short 'the Act') is filed, the CIT(A) is duty bound to decide the appeal on merits.

7. It is further observed that the CIT(A) has also given his findings on merits of the issue without considering the report of DVO. The Assessing Officer during the assessment proceeding had referred valuation of property to DVO under section 50C(2) of Income Tax Act,1961 ( in short 'the Act') vide letter dated 23/11/2016.

Since, the assessment was getting time barred and report from the DVO was not received, the Assessing Officer, passed the assessment order under section 143(3) of the Act on 29/12/2016. Without commenting on merits of the issue raised in appeal, the appeal is restored back to the CIT(A) for adjudication on merits after affording reasonable opportunity of hearing to the assessee, in accordance with law.

8. The assessee is directed to appear before the CIT(A) on service of the notice and co-operate in First Appellate proceedings. The appeal is allowed for statistical purpose in the terms aforesaid.

Order pronounced in the open Court on Monday, the 26<sup>th</sup> day of July, 2021

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated 26/07/2021

Vm, Sr. PS (O/S)

**प्रतिलिपि अग्रेषित**Copy 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.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)  
ITAT, Mumbai