

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC" MUMBAI**

**BEFORE SHRI SAKTIJIT DEY (JUDICIAL MEMBER) AND
SHRI MANISH BORAD (ACCOUNTANT MEMBER)**

**ITA No. 8044/MUM/2019
Assessment Year: 2011-12**

Apna Ghar Unit No. 4 CHS Ltd.,
Ground floor, Girnar Samarth
Nagar, Andheri (West),
Mumbai-400053.

Vs. Income Tax Officer-15(1)(1),
Room No. 456, 4th floor, Aayakar
Bhavan, M.K. Road,
Mumbai-400020.

PAN No. AAACA 8578 Q
Appellant

Respondent

Assessee by : Ms. Dinkle Hariya, AR
Revenue by : Ms. Smita Verma, DR

Date of Hearing : 10/08/2021
Date of pronouncement : 10/08/2021

ORDER

PER MANISH BORAD, A.M.

The present appeal is filed by the assessee against the order of the Commissioner of Income Tax (Appeals)-24, Mumbai [in short 'CIT(A)'] for the assessment year 2011-12 dated 31.10.2019 and arises out of assessment completed u/s 144 r.w.s. 147 of the Income Tax Act, 1961 (in short the Act).

2. At the outset, the Ld. AR for the assessee submitted that order of the Assessing Officer is *ex-parte* and Ld. CIT(A) also not dealt issue on merits. She also contended that assessee had filed the return under the correct PAN which has not been considered by both the lower authorities. The pray was made to

set aside the issues raised in this file to Ld. Assessing Officer for a fresh adjudication and also considering the return filed under the correct PAN.

3. Per contra, the Ld. DR could not controvert this fact that Ld. CIT(A) has not dealt the issue on merits.

4. We have heard the rival contentions of both the parties and perused the material on record. Though the assessee has raised multiple ground on merits, we however observe that the assessment order framed by Ld. AO is *ex-parte* i.e. u/s 144 r.w.s. 147 of the Act. We also observe that when the assessee filed the appeal before the First Appellate Authority raising various grounds on merit, none was dealt on merit and Ld. CIT(A) passed the order applying judgment of the Hon'ble Delhi High Court in the *Multiplan India P. Ltd.* 38 ITD 320 (1991) (Delhi).

5. Before us, the Ld. counsel for the assessee submitted that the assessee was originally granted the PAN in the status of the company i.e. **AAACA 8578 Q** but since the assessee is association of person, new PAN was allotted i.e. **AADAA 9738 R** and the income earned by the assessee from rent and interest income were duly disclosed in the return filed under new PAN. However, both the lower authorities have not considered the return filed under new PAN. The Ld. AO has assessed in treating the assessee as a company. Prayer has been made for setting aside the issue to Ld. Assessing Officer for deciding afresh. Ld. Departmental Representative (DR) was fair enough to not oppose this request under the given facts.

6. We, therefore, under the facts and circumstances of the case and in the interest of justice set aside all the issues raised in the instant appeal and direct

the Assessing Officer to frame *de novo* assessment and after considering the return filed by the assessee under the status of association of person with the new PAN No. **AADAA 9738 R** and decide as per the provisions of law after giving due opportunity of hearing.

7. In the result, the appeal filed the assessee in ITA No. 8044/M/2019 is allowed for statistical purposes.

Order pronounced in the open Court on 10/08/2021.

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

Mumbai;

Dated: 10/08/2021.

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Assistant Registrar)
ITAT, Mumbai