

IN THE INCOME TAX APPELLATE TRIBUNAL  
"SMC" Bench, Mumbai  
Before Shri Shamim Yahya, Accountant Member

I.T.A. No. 1545/Mum/2020  
(Assessment Year 2008-09)

Smt. P.Vani Murthy C-402, Fortune towers Madhapur, Hyderabad-500 082  PAN : ACKPM0345C (Appellant)	Vs.	DCIT,CC-4(1) Room No.1916, 19 <sup>th</sup> Floor Air India Building Nariman Point Mumbai-400 021  (Respondent)
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Assessee by	None
Department by	Shri Milind S.Chavan-DR
Date of Hearing	01.11.2021
Date of Pronouncement	02.11.2021

O R D E R

Per Shri Shamim Yahya (AM) :-

This appeal by the assessee is directed against the order of learned Commissioner of Income Tax (Appeals)-52 dated 13.12.2019 and pertains to assessment year 2008-09.

2. Grounds of appeal read as under:-

1. On the facts and circumstances of the case and in law, the Ld. CIT (A) erred in confirming the AO's action of estimating total income of appellant at Rs. 1,76,400/- despite the fact that appellant has declared returned income at Rs. 1,37,300/- in return of income filed u/s. 139 of the Act.
  2. The appellant craves leave to add to, alter, amend and /or delete all or any of the foregoing grounds of appeal.
  3. The appellant prays before the Hon'ble Tribunal to delete the additions made by the AO and to the extent confirmed by the Ld. CIT(A).
3. Brief facts of the case are that assessee was framed in this case u/s. 143(3) r.w.s. 153C. In his case, AO noted that despite several notices, the assessee

has not cooperated and not responded. The AO made the addition on the basis of last year return as under:-

“From the available records in this office, it is noticed that the assessee has not filed return of income for the year under consideration. In absence of any reply of any notice/show cause notice etc from assessee, the return of income filed by the assessee for immediate assessment year i.e. AY 2009-10 is/taken as return income for the AY 2008-09. The return income of the assessee for the AY 2009-10 is Rs.1,76,400/- and therefore, deemed income of the assessee for the AY 2008-09 is also taken at Rs.1,76,400/-.”

4. Upon assessee's appeal Ld.CIT(A) affirmed the action of the AO, he has held as under:-

“All the Grounds relate to the estimation of income for the relevant year to be of Rs, 1,76,400/- on the basis of the income returned by the assessee in the immediate succeeding year relevant to A.Y. 2009-10. As discussed in para 2.1 above, there was no compliance to the various statutory notices issued by the AO and this left the AO with no option but to complete the assessment by reasonably estimating the income of the assessee for the relevant year on the basis of the income returned of RE. 1,76,400/- in the immediate succeeding year relevant to A.Y. 2009-10. The assessee contends that she had filed her return of income for the relevant year declaring an income of Rs. 1,37,300/-, however there is no evidence submitted in support of her claim. In any case, the income of the assessee for the relevant year has only been reasonably estimated by the AO since there was no compliance in the assessment proceedings. Therefore, the filing of return declaring an income of-Rs. 1,37,300/- for the relevant year, is not so material. Accordingly, all the grounds of appeal are dismissed.”

5. Against the above order, assessee is in appeal before ITAT.

6. I have heard the ld. DR and perused the record. I note that assessment has been framed by the AO, because of non cooperation of the assessee on the basis of income returned last year, AO has also noted that assessee has not filed any return during the year. However, assessee has contended before the Ld.CIT(A) that for the current assessment year, assessee has already declared an income of Rs. 1,37,300/-. However Ld.CIT(A) has rejected this claim by

observing that there is no evidence submitted in support of this claim. Ld.CIT(A) has further held that filing of return declaring income of Rs. 1,37,300/- for the relevant year is not so material. In my considered opinion, AO from his assessment records can very well check whether the assessee has filed this return as claimed or not. Ld.CIT(A) observation that whether assessee has filed current year return or is not material is not sustainable AO is making the addition on the basis of last year return by noting that assessee has not filed return for the current year. If the return for the current year has been filed, the assessment has to be framed on the basis of current year return. Hence in the interest of justice,, I remit the issue to the file of the AO. The AO shall examine the issue afresh in light of the direction as above and pass order afresh after giving assessee an opportunity of being heard.

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

Pronounced in the open court on 02 .11.2021

Sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER

Mumbai; Dated : 02 /11/2021  
Thirumalesh, Sr.PS

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,

(Assistant Registrar)  
ITAT, Mumbai

<b>Sr. No.</b>	<b>Details</b>	<b>Date</b>	<b>Initials</b>	<b>Designation</b>
1	Draft dictated directly on computer	1.11.2021		Sr.PS/PS
2	Draft Placed before author			Sr.PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			JM/AM
5	Approved Draft comes to the Sr.PS/PS			Sr.PS/PS
6	Kept for pronouncement			Sr.PS/PS
7	File sent to the Bench Clerk			Sr.PS/PS
8	Date on which the file goes to the Head clerk			
9	Date on which file goes to the AR			
10	Date of Dispatch of order			
11	Draft dictation sheets is enclosed			