

आयकर अपीलीय अधिकरण
मुंबई पीठ "ई", मुंबई
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "E", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER
आअसं. 7161/मुं/2019 (नि.व.2014-15)
ITA NO.7161/MUM/2019 (A.Y.2014-15)

Everilda Marlene D'Mello.

Plot No. 349, Avinash,
33rd Road, TPS-III, Bandra (W),
Mumbai-400050.

PAN: **AACPD3021C**

..... अपीलार्थी /Appellant

बनाम Vs.

ITO, 12(1)(3),
Room No. 145A, 1st Floor,
Aayakar Bhavan, M.K. Road,
Mumbai-400020

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Sh. Nishit Gandhi

प्रतिवादी द्वारा/Respondent by : Sh. V.Vinod Kumar

सुनवाई की तिथि/ Date of hearing : 06/10/2021

घोषणा की तिथि/ Date of pronouncement : 06/10/2021

आदेश/ ORDER

PER VIKAS AWASTHY, J.M:

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-20, Mumbai [hereinafter referred to as 'the Act'] dated 23.09.2019 for the Assessment Year (AY) 2014-15.

2. Sh. Nishit Gandhi appearing on behalf of the assessee submitted that the assessee is a senior citizen. The assessment for AY 2014-15 was made under section

144 read with section 147 of the Income Tax Act, 1961 [hereinafter referred to as 'the Act']. The Assessing Officer (AO) had issued notice under section 148 on 26.03.2018. In response to the notice, the assessee filed return of income on 13.04.2018. Thereafter, the AO issued notices under section 142(1) of the Act to the assessee through ITBA Computer System, however, the said notices were not served on the assessee. The AO completed the assessment after invoking the provisions of section 144 of the Act. The assessee assailed the assessment order dated 18.12.2018 before the CIT(A) interalia assailing re-opening of assessment, assessment made u/s. 144 of the Act and merits of the additions. The Id. counsel for the assessee appeared before the CIT(A) and furnished brief written submission and prayed for time to file detailed submissions. The CIT(A) decided the appeals of assessee on the brief submissions submit by the counsel of the assessee and refuse to mark his presence as by that time no Power of Attorney was filed by the Counsel before the CIT(A). The Id. counsel submitted that the CIT(A) has erred in not considering the request of the counsel of assessee to grant time and at the same time accepting the submissions from him. The Id. counsel submitted that if the case is restored back to the AO, the assessee would be able to show that no addition is warranted.

3. Per contra, Sh. V. Vinod Kumar representing the Department vehemently defended the impugned order and prayed for dismissing appeal of the assessee. The Id. DR submitted that the assessee has been non-cooperative before the AO and the CIT(A). The physical notices were sent to the assessee under section 148 and 143(2) of the Act and the same were duly served. Despite service of notices, the assessee failed to appear before the AO.

4. Submissions made by rival sides heard, orders of the authorities below examined. A perusal of the assessment order shows that consequent to notice

issued under section 148 of the Act, the assessee filed return of income. Subsequently, the AO issued notice under section 142(1) through ITBA Computer System on several occasions, however, the assessee did not respond to the notices. The contention of the assessee is that the notices served through ITBA Computer System were never served on the assessee. The AO proceeded with the assessment under section 144 of the Act. In First Appellate proceedings, the assessee was not properly represented. The Counsel who appeared before the CIT(A) was not having valid authorization, the CIT(A) refused to accept his request for allowing time, however, the CIT(A) after accepting written submissions from the said counsel passed the impugned order.

5. Taking into consideration entirety of facts and keeping in view the principles of natural justice, we deem it appropriate to restore this case back to the file of AO for framing fresh assessment after affording reasonable opportunity of hearing to the assessee in accordance with law. The AO shall issue notice to the assessee on the address mentioned in Form-36. Upon service of notice, the assessee shall either in person or through Authorized Representative appear before the AO and co-operate in the assessment proceedings.

6. In the result, impugned order is set-aside and appeal of assessee is allowed for statistical purpose in the terms aforesaid.

Order pronounced in the open court on **Wednesday**, the **06th** day of October, 2021.

Sd/-

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई/Mumbai, दिनांक/Dated: 06/10/2021

SK, PS

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य / JUDICIAL MEMBER

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.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai