

आयकर अपीलीय अधिकरण
मुंबई पीठ "एफ "
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री अमरजीत सिंह, लेखा सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER

आअसं. 300/मुं/2021(नि.व.2009-10)
ITA NO. 300/MUM/2021 (A.Y.2009-10)
आअसं. 301/मुं/2021(नि.व.2010-11)
ITA NO. 301/MUM/2021 (A.Y.2010-11)

Shri Uttamchand S. Jain,
49. M.S. Ali Road, Ground Floor,
12th Khetwadi Lane Corner,
Mumbai 400 007
PAN: ACP PJ-9067-P

: अपीलार्थी/ **Appellant**

बनाम/ Vs.

Income Tax Officer 19(3)(5),
Matru Mandir, 2nd Floor, Room No.219,
Tardeo, Mumbai 400 007

: प्रत्यर्थी/ **Respondent**

Appellant by : Shri Aadesh Shah
Respondent by : Shri S N Kabra
सुनवाई की तारीख/
Date of Hearing : 18/04/2022
घोषणा की तारीख /
Date of Pronouncement : 18/04/2022

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

These two appeals by the assessee are directed against the order of Commissioner of Income Tax(Appeals)-30, Mumbai [in short 'the CIT(A)'] dated 23/10/2019 for the assessment year 2009-10 and against the order of CIT(A) dated 25/06/2019 for the Assessment Year 2010-11, respectively.

These appeals are taken up for adjudication in seriatim of assessment year.

ITA NO. 300/MUM/2021 (A.Y.2009-10):

2. Shri Aadesh Shah appearing on behalf of the assessee submitted that the CIT(A) has dismissed the appeal of assessee in an ex-parte proceedings. The Id. Authorized Representative for the assessee submitted that after filing of appeal in April, 2015, the assessee had shifted to the new address. After change of address, the assessee informed new address to the CIT(A) vide letter dated 19/09/2016. The said intimation is at page -3 of the Paper Book. The assessee also took necessary steps to get the new address incorporated in PAN database. After the change in PAN database intimation was received from the Department, the same is at page -4 of the paper book. The CIT(A) issued notices to the assessee at the old address which were never served on the assessee. The CIT(A) decided the appeal ex-parte confirming the additions made in the assessment order dated 24/03/2015 passed u/s. 143(3) r.w.s. 263 of the Income Tax Act, 1961 (in short 'the Act'). The Id. Authorized Representative for the assessee further submitted that assessee did not receive the copy of the impugned order dated 23/10/2019. Subsequently, on an enquiry it transpired that all the appeal files have been transferred under Faceless Appeal Scheme. On enquiry made from online portal of the Income Tax Department the assessee came to know on 14/01/2021 that appeal of the assessee has already been dismissed by CIT(A) vide order dated 23/10/2019. The assessee thereafter downloaded the order of CIT(A) from the portal and filed the present appeal. The Id. Authorized Representative for the assessee submitted that the sequence of events from the date of filing Form No.35

before the CIT(A) till the downloading of order of CIT(A) from Web- portal of Income Tax Department is narrated in an affidavit filed by the assessee dated 17/03/2022.

3. Shri S N Kabra representing the Department vehemently defended the impugned order and prayed for dismissing the appeal of assessee. The Id. Departmental Representative submitted that CIT(A) has given ample opportunity to the assessee to defend his case. A perusal of para-4 of the order of CIT(A) would show that repeated notices were sent to the assessee, however, the assessee failed to respond to the said notices.

4. Both sides heard, orders of authorities below examined. The CIT(A) in an ex-parte proceedings has dismissed the appeal of assessee. The assessee shifted to his new address after filing of the appeal in Form-35 in April, 2015. The assessee intimated the CIT(A) about change of address on 19/09/2016. The CIT(A) issued notices to the assessee on 25/02/2016, 25/07/2016, 10/11/2016, 28/12/2016, 15/02/2017 and 02/07/2018. These notices were purportedly issued on old address of the assessee, as mentioned in Form No.35. Out of six notices, four were issued after the assessee intimated the CIT(A) about change of address. The CIT(A) failed to take cognizance of the intimation of new address by the assessee. The assessee also took steps to get his new address incorporated in PAN database. This fact is evident from the communication received by assessee from the Department intimating change of address in PAN database (at page-4 of the Paper Book). From the documents on record it can be construed that non-appearance by the assessee before CIT(A) was for bona-fide reason- non service of notice. Taking into consideration entire facts, we deem it appropriate to restore this appeal back

to the file of CIT(A) for denovo adjudication, after affording reasonable opportunity of hearing to the assessee, in accordance with law. The CIT(A) shall serve notice to the assessee on the new address as updated in PAN database. The assessee is directed to appear before CIT(A) on service of notice and make his submissions. The impugned order is set-aside and the appeal of assessee is allowed for statistical purpose.

ITA No.301/Mum/2021(A.Y- 2010-11):

5. The Id. Authorized Representative for the assessee submitted that the appeal of the assessee for Assessment Year 2010-11 has been dismissed by the CIT(A) in an ex-parte proceedings. The reason for non-appearance of the assessee before the CIT(A) is non-service of the notice. The assessee has filed an affidavit giving sequence events and reasons for non-appearance before the CIT(A).

6. The Id. Departmental Representative submitted that in Assessment Year 2010-11 assessee never appeared before the Assessing Officer and CIT(A). The Assessing Officer was constrained to invoke provisions of section 144 of the Act as the assessee never responded to the notices issued by the Assessing Officer. Even before the CIT(A) the assessee failed to appear despite repeated notices.

7. Both sides heard. We find non-service of notices issued by the CIT(A) was for the reason for assessee's non-appearance before the First Appellate Authority. The facts in present appeal are identical to facts in appeal for Assessment Year 2009-10. Taking into consideration entirety of facts, we deem it appropriate to restore this appeal back to the file of CIT(A) for denovo

adjudication after affording reasonable opportunity of hearing to the assessee, in accordance with law. The CIT(A) shall serve notice to the assessee on the address updated by the assessee in PAN database. The assessee is directed to appear before the CIT(A) on service of notice . The assessee shall co-operate in the proceedings before the first appellate authority. In the result, impugned order is set-aside and the appeal of assessee is allowed for statistical purpose.

8. To sum up, Appeal in ITA No.300/Mum/2021 & ITA No.301/Mum/2021 for Assessment Years 2009-10 and 2010-11, respectively are allowed for statistical purpose.

Order pronounced in the open Court on Monday, the 18th day of April, 2022.

Sd/-

(AMARJIT SINGH)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated: 18/04/2022

Vm, Sr. PS(O/S)

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