

IN THE INCOME TAX APPELLATE TRIBUNAL

"SMC" BENCH, MUMBAI

BEFORE SHRI PRAMOD KUMAR, VICE PRESIDENT AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No. 1947/Mum./2020

(Assessment Year : 2002-03)

ITA No. 1948/Mum./2020

(Assessment Year : 2003-04)

ITA No. 1949/Mum./2020

(Assessment Year : 2004-05)

ITA No. 1950/Mum./2020

(Assessment Year : 2005-06)

ITA No. 1951/Mum./2020

(Assessment Year : 2006-07)

Chandani N. Hotchandani
Flat no.302, Paradise Apartment
Plot no.670, Near Guddu Palace
Ulhasnagar, Kalyan 421 003
PAN – ABJPH7628D

..... Appellant

v/s

Income Tax Officer
Ward-2(1), Mumbai

..... Respondent

Assessee by : Ms. Hiral Sejpal
Revenue by : Ms. Sudha Ramchandran

Date of Hearing – 20/04/2022

Date of Order – 06/06/2022

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeals have been filed by the assessee challenging the common impugned order of even date 02/03/2020, passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Commissioner

of Income Tax (Appeals)-3, Thane, [*learned CIT(A)*], for the assessment years 2002-03, 2003-04, 2004-05, 2005-06 and 2006-07.

2. Since all the appeals involve common issue and the impugned order is also common as well, therefore all these appeals were heard together as a matter of convenience and are being adjudicated by way of this consolidated order.

3. The only grievance of the assessee in the present appeals is that the learned CIT(A) has not complied with the directions of the Co-ordinate Bench of Tribunal, vide order dated 25.07.2012, passed in ITA no.2425 to 2429/Mum./2011, and has dismissed the appeals filed by the assessee.

4. The brief facts of the case, as emanating from the record, are: For the years under consideration, no return of income was filed by the assessee. The cases were re-opened on the basis of information received from the Investigation Wing, Kalyan. From which it was found that the assessee had made investments in mutual funds and had not produced any documentary evidence to explain the source of investment. Accordingly, notice under section 148 of the Act was issued to the assessee for the years under consideration. However, the assessee neither attended nor filed any submissions / clarification in respect of the notice so issued under section 148 of the Act. In the absence of details of source of investments made by the assessee in mutual funds, the Assessing Officer treated the investment in mutual funds as unexplained

investment as per the provisions of section 69C of the Act, vide separate orders of even date 23/12/2008, passed under section 144 r/w section 147 of the Act.

5. The assessee's appeals were dismissed by the learned CIT(A) vide ex-parte order.

6. The assessee filed application under section 154 of the Act before the CIT(A). In the application, it was submitted that the first notice for hearing was received by the assessee after the date fixed for hearing and the subsequent notices were never received by the assessee and thus the assessee sought revision of the first appellate order on the basis that no opportunity of hearing was granted to the assessee. However, the learned CIT(A) dismissed the rectification application filed by the assessee.

7. Being aggrieved by the order passed by the learned CIT(A) under section 154 of the Act, the assessee preferred appeals before the Tribunal for all the years under consideration. After hearing the parties, the Tribunal restored the appeals to the file of the learned CIT(A) for deciding the same on merits, after granting adequate opportunity of being heard to the assessee.

8. Pursuant thereto, the learned CIT(A), vide impugned common order dated 02/03/2020, dismissed the appeals by not following the specific directions of the Tribunal, by observing as under:-

"In the present facts of the case, I am constrained to observe that the directions of Hon'ble Tribunal cannot be followed as the CIT(Appeals) has limited powers in proceedings of appeal and cannot review its own orders. It also needs to be brought on record that the appellant in the present case did not respond to notices issued by the Assessing Officer at the time of original assessment. Appeal was preferred but appellant has not responded to opportunity granted by first appellate authority in proceedings before it. Further the order passed by the First Appellate Authority has not been appealed against and has become final. And now, the appellant is adopting a roundabout route to go back to the issues of assessment decided by first appellate authority via a rectification request and then an appeal to Tribunal against that rectification rejection order. This method adopted and accepted by the Honourable Tribunal tantamounts to waiving all the non-compliances of the appellant before the assessing officer and before the first appellate authority. No Law permits any tribunal under the guise of natural justice to do so. The issues have become final and they cannot be revisited via the route of rectification application. The issue of natural justice demands genuine difficulty being appreciated or any undue hardship being faced by an uncalled for action of any authority. In the present case none of these situations have been shown to exist. In this situation tribunal cannot grant to appellant what is not otherwise permitted by Law.

.....

..... How can a proceeding which has already been completed and order passed thereon, which order has been accepted by the appellant, be gone into again under directions of Honourable Tribunal arising from another order of the same appellant unconnected with the main issue. If this were permissible, the Hon'ble Tribunal themselves could have taken up the appeal afresh and passed an order on merits. These appeals are thus disposed off. For statistical purposes these five appeals are treated as dismissed."

Being aggrieved, the assessee is in appeal before us.

9. During the course of hearing, the learned A.R. submitted that there were specific directions of the Co-ordinate Bench of Tribunal, which were not complied by the learned CIT(A), and the appeals of the assessee were not adjudicated on merits and have been dismissed.

10. On the other hand, the learned Departmental Representative fairly agreed to the submissions of the learned A.R.

11. We have considered the rival submissions and perused the material available on record. Before us, this is the second round of appeal. We find that in the present case, during the first round of proceedings, the Co-ordinate Bench of the Tribunal vide order dated 25.07.2012, passed in ITA no.2425 to 2429/Mum./2011, restored the appeals of the assessee for all the years under consideration to the file of the learned CIT(A) for *de novo* adjudication on merits. The Tribunal, while restoring the appeals to the file of the learned CIT(A), observed as under:-

"7. We have heard both the parties and submissions made by them. Obviously the assessee had been on the default side all through, best judgment under section 144, ex-parte order by CIT(A), delay in filing of the appeal before Tribunal, are right objections of the DR. However, we are concerned we have to bend ourselves towards substantial justice and not towards technical considerations. Taking this path, we restore these cases to the CIT(A), who shall once again provide adequate opportunities to the assessee, and decide the appeals on merit."

12. We find that instead of following the specific directions of the Co-ordinate Bench of Tribunal, the learned CIT(A) vide impugned order questioned the authority of the Tribunal in restoring the cases to the file of the learned CIT(A) for *de novo* adjudication on merits. In our considered view, the impugned order passed by the learned CIT(A) is not in accordance with the directions issued by the Tribunal, which needless to say is an authority higher in appellate hierarchy under the provisions of the Act. Thus, if any directions are issued by the Tribunal under the

provisions of section 254(1) of the Act, the authorities below including that of the Commission of Income Tax (Appeals) are duty bound to comply with the directions so issued by the Tribunal. If any party, including the Revenue, is aggrieved with such directions, the Act provides mechanism for seeking redressal of the grievance. In view of above, the impugned order passed by the learned CIT(A) is hereby set aside and the learned CIT(A) is once again directed to *de novo* adjudicate the appeals of the assessee for all the years under consideration on merits by passing a speaking order and after providing adequate opportunity of hearing to the assessee. As the present appeals pertain to almost 15-20 years old assessment years, we further direct the learned CIT(A) to make ever possible endeavour to pass a speaking order within a period of six months from the date of receipt of this order. Further, the assessee is also directed to appear before the learned CIT(A) on all the dates of hearing, as may be fixed, without any default. We order accordingly.

13. In the result, appeals by the assessee are allowed for statistical purpose.

Order pronounced in the open court on 06/06/2022

Sd/-
PRAMOD KUMAR
VICE PRESIDENT

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 06/06/2022

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai