

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH “SMC”, MUMBAI**

**BEFORE SHRI BASKARAN BR, ACCOUNTANT MEMBER
AND
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.1552/M/2021
Assessment Year: 2011-12**

Late Bhagirathi Krishna Bhagat L/H Karan Suresh Bhagat, House No.33, Soni Sadan, Bhagat Colony, Nagaon Road, Nagoan, Bhiwandi, Dist. Thane- 421 302 PAN: AKLPB6106D	Vs.	Income Tax Office, Ward 1(1), Mohan Plaza, 1 st Floor, Wayle Nagar, Kalyan (W)- 421301
(Appellant)		(Respondent)

Present for:

Assessee by : None
Revenue by : Shri Kanhiya Lal Kanak, D.R.

Date of Hearing : 18 . 05 . 2022
Date of Pronouncement : 16 . 06 . 2022

ORDER

Per : Kuldip Singh, Judicial Member:

The appellant, Late Bhagirathi Krishna Bhagat L/H Karan Suresh Bhagat (hereinafter referred to as ‘the assessee’) by filing the present appeal, sought to set aside the impugned order dated 09.07.2021 passed by the National Faceless Appeal Centre(NFAC) [Commissioner of Income Tax (Appeals), Delhi] (hereinafter referred to as CIT(A)] on the grounds inter alia that:-

“1. The Ld. CIT (appeal) failed to consider that the appellant has properly explained investment in her return of income and as such impugned addition of Rs. 8, 18,550/- is contrary to law and factually incorrect.

2. The Ld. CIT (appeal) has failed to consider that the assessing officer has made impugned addition in a vague manner without specifying any section of IT Act 1961 and therefore Ld. CIT (appeal) is not justified in holding the same to be u/s 68 of Income Tax Act 1961.

3. The Ld. CIT (appeal) also failed to consider that the assessing officer has erroneously asserted that the impugned addition is out of undisclosed income merely because her son Shri S. K. Bhagat has made declaration under IDS Scheme in the same context.

4. The Ld. CIT (A) erred in justifying the impugned addition by relying and referring the decisions of various High Courts which are irrelevant and non applicable in the present case.

5. The impugned appellate order is passed in Ex-parte manner since the appellant could not file her submission during the course of hearing as the Income Tax Portal for E-Proceedings was totally broken down and no submission could be made for many days.

6. Without prejudice to above, the appellant slates that the impugned order appealed against is void-ab-initio since the same is passed against a dead person.

7. It is therefore prayed that Hon'ble Members may be pleased to delete the impugned addition amounting to Rs. 8,18,550/- in A.Y. 2011-12 or in alternative the Hon'ble Members may be pleased to pass any such other order or orders in favor of the appellant as may be deemed fit in the interest or justice."

2. Briefly stated facts necessary for adjudication of the controversy at hand are : assessment in this case was reopened on verification of AST aata that assessee has purchased an immovable property for a consideration of Rs.30 lakhs with stamp value of Rs.48,84,000/- under section 50C of the Income Tax Act, 1961 (for short 'the Act') on 23.10.2010 jointly with three others, but failed to file the return of income.

3. Declining the contentions raised by the assessee the Assessing Officer (AO) proceeded to make addition of Rs.8,18,550/- to the total income of the assessee and thereby framed the assessment at the total income of Rs.10,73,540/- under section 143(3) read with section 147 of the Act.

4. Assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has confirmed the addition by dismissing the

appeal. Feeling aggrieved the assessee has come up before the Tribunal by way of filing present appeal.

5. Despite issuance of the notice to the assessee none appeared on behalf of it, so the Bench decided to decide this appeal on the basis of material available on record with the assistance of the Ld. D.R. for the Revenue.

6. We have heard the Ld. Departmental Representative for the Revenue, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and case law relied upon.

7. Bare perusal of the impugned order passed by the Ld. CIT(A) goes to prove that the assessee has not been provided with an opportunity of being heard. Because in para 4, two notices dated 21.01.2021 and 01.07.2021 are shown to have been issued to the assessee which reportedly remained non complied and it is nowhere mentioned if the said notices were ever served upon the assessee and as such question of putting in appearance by the assessee does not arise. Providing adequate opportunity of being heard to the assessee is cardinal principle of rule of natural justice without which order passed by quasi judicial authority is not sustainable. Se we hereby set aside the impugned order passed by the Ld. CIT(A) and remitted the same back to the Ld. CIT(A) to decide afresh after providing opportunity of being heard to the assessee.

Order pronounced in the open court on 16.06.2022.

Sd/-
(BASKARAN BR)
ACCOUNTANT MEMBER
Mumbai, Dated: 16.06.2022.

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.