

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC" NEW DELHI**

SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER

आ.अ.सं./I.T.A No.1953/Del/2019

निर्धारणवर्ष/Assessment Year: 2010-11

Shakeel Ahmed B-1/104, Punjabi Saudagar Apartment, Mayur Vihar, Phase-1, Extn., New Delhi.	<u>बनाम</u> Vs.	ACIT (OSD), Ward 3(4) New Delhi.
PAN No. AERPA9595H		
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

निर्धारितकीओरसे /Assessee by	Sh. Manu Giri, Adv.
राजस्वकीओरसे /Revenue by	Sh. Om Prakash, Sr. DR

सुनवाईकीतारीख/ Date of hearing:	30.06.2022
उद्घोषणाकीतारीख/Pronouncement on	08.8.2022

आदेश /O R D E R

This appeal is filed by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-1, Noida dated 28.09.2018 for the AY 2010-11.

2. The Ld. Counsel for the assessee, at the outset, submits that the appeal filed by the assessee against the best judgment assessment completed u/s 144 of the Act by the AO was dismissed by the Ld.CIT(A) on the ground that the assessee has not complied with the mandatory conditions in provisions of section 249(4)(b) of the I.T. Act. The Ld. Counsel for the assessee submits that the Ld. CIT(A) did not admit the

appeal of the assessee observing that there is non-compliance of mandatory provisions of section 249(4)(b) without verifying the facts. The Ld. Counsel for the assessee referring to provisions of section 249(4) submits that the appeal filed by the assessee before the Ld. CIT(A) shall not be admitted unless at the time of filing of appeal, where a return has been filed by the assessee the assessee has paid the tax due on the income returned or where no return has been filed by the assessee the assessee has paid an amount equal to the amount of advance tax which was payable by the assessee. The Ld. Counsel submits that the assessee in fact e-filed his return of income on 03.10.2011 declaring income of Rs.1,70,317/- vide acknowledgement no. 304830850031011 and has complied with the provisions of clause (a) of sub-section (4) of section 249 of the Act. Therefore, it is submitted that the Ld. CIT(A) grossly erred in not admitting the appeal of the assessee.

3. The Ld. Counsel for the assessee further submits that the assessment was completed by the Assessing Officer u/s 144 of the Act read with 147 of the Act. The Ld. Counsel submits that the AO issued notice u/s 142(2) to the old address i.e. D-188, Sector-55, Noida, Gautam Budh Nagar which was not served on the assessee. The Ld. Counsel submits that subsequently the Assessing Officer issued show cause notice u/s 144 on 17.11.2017 to comply/appear on 30.11.2017 at the new address of the assessee i.e. B-1/104, Punjabi Saudagar Apartment, Mayur Vihar, Phase-1, Extn., Delhi-110091. Ld. Counsel submits that assessee

received the said notice belatedly and upon receiving the said notice assessee reached the office of the Assessing Officer but was informed that the case was closed and later ex-parte assessment order u/s 144 read with 147 was passed. The Ld. Counsel submits that since the assessment was made as best judgment assessment as the notices either not served on the assessee including the notice u/s 143(2) of the Act or the notices were served belatedly wherein the assessee could not comply the notices in time in the interest of justice, the assessment may be restored to the file of the AO for *denovo* assessment.

4. Rival contentions were heard, perused the record placed before me. It is noticed that assessment was completed u/s 144 read with 147 of the Act determining the income of the assessee at Rs.10,20,880/- as there was no compliance by the assessee for the notices issued by the Assessing Officer. On appeal the Ld. CIT(A) dismissed the appeal of the assessee observing that the assessee has not complied with the provisions of section 249(4)(b) of the Act. Before me the Ld. Counsel for the assessee furnished a copy of the return filed by the assessee and submitted that there is no valid reason for not admitting the appeal of the assessee by the Ld. CIT(A) as the assessee had filed his return of income and paid taxes for the assessment year under consideration. On reading of the provisions of section 249(4) of the Act it is noticed that provisions of clause (a) of section 249(4) shall apply to the assessee and the assessee has complied with the provisions by filing return of income

and paying the taxes due on such income returned. Therefore, I hold that there is no justification in not admitting the appeal of the assessee and hence, the order of the Ld. CIT(A) is set aside.

5. Further it is observed that the assessment was made u/s 144 of the Act for non-compliance of notices by the assessee. It is the submission of the Ld. Counsel that the assessee could not comply with the notices as some of the notices were issued on old address and one notice was issued on the new address as stated above.

5.1 It is further submitted that even the mandatory service of notice u/s 143(2) was not issued by the Assessing Officer and it is the prayer that the assessment be set aside for making fresh assessment in accordance with law. In the interest of justice the appeal of the assessee is restored to the file of the Ld. AO for *denovo* assessment in accordance with law after providing adequate opportunity to the assessee. The best judgment assessment made by the Assessing Officer u/s 144 r.w.s. 147 is set aside and the AO is directed to frame the assessment *denovo* in accordance with law.

6. In the result, the appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 08/08/2022

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Dated: 08/08/2022

**Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard
file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi