

IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI
BEFORE SHRI ABY T. VARKEY, JM AND SHRI OM PRAKASH KANT, AM

आयकर अपील सं/ I.T.A. No.2942 /Mum/2022
(निर्धारण वर्ष / Assessment Year: 2011-12)

Sweta Samir Shah 94, Om Dariya Mahal, 80, Nepean Sea Road, Mumbai- 400006.	बनाम/ Vs.	ITO-19(3)(4) Matru Mandir 1 st & 2 Floor, Tardeo, Nana Chowk, Grant Road, Mumbai-400007.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AGVPS5843C		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	Shri Ishwer Prakash Rathi	
Revenue by:	Shri Aditya M. Rai (Sr. AR)	

सुनवाई की तारीख / Date of Hearing: 16/01/2023
घोषणा की तारीख /Date of Pronouncement: 31/01/2023

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee against the order of Ld. Commissioner of Income Tax (Appeals)/NFAC, Delhi dated 22.09.2022 for the AY. 2011-12.

2. At the outset, the Ld. AR brought to our noticed that the Ld. CIT(A) has passed a cryptic order and the AO has passed an exparte order. According to assessee, AO has passed the exparte order because assessee was not able to reply to his show cause notice since the assessee didn't receive the notice and brought to our notice the following facts that the assessee filed her return of income for the year under consideration on 31-08-2012 declaring herself as non-resident and had filed the copy of the ITR-V, which fact is discernable from perusal of 1st page of the return of income. Thus according to assessee the AO was wrong to state in the assessment order that no return of income was filed by the appellant/assessee. According to assessee, the



ITA No.2942/Mum/2022

A.Y. 2011-12

Sweta Samir Shah

assessment was re-opened u/s 148 of the Act, however notice u/s 148 of the Act was not received by the appellant/assessee since it was not served on the present address; and due to the non-receipt of the notices and being non-resident, the assessment proceedings could not be attended. Consequently an order u/s 144 rws 147 of the Act was passed against her. Under the aforesaid circumstances, the details required for the re-assessment proceedings could not be filed during the re-assessment proceedings. However, it was pointed out by the Ld. AR that the order u/s 144 rws 147 was served upon the correct address of the appellant assessee and the appeal was filed before the Commissioner of Income-tax, (appeal), NFAC New Delhi with in time. But inadvertently the appeal before CIT (A) could not be attended due to unawareness of the e-proceedings system and since the AO has passed the ex-parte re-assessment order by making addition of the entire amount of Rs.1,37,01,000/- being the alleged investment in share of M/s Lotus surgical P Ltd as un-explained investment, the assessee pleads that an opportunity may be granted to assessee to present its case; and drew our attention to the decision of the Hon'ble Supreme Court in Tin Box Company Vs. CIT (249 ITR 216) (SC) wherein the Hon'ble Apex Court has held that if the assessee has not been granted proper opportunity before the AO, then it should be restored back to the AO for denovo assessment. The Hon'ble Supreme Court held in the case of **Tin Box Company (supra)** that

" It is unnecessary to go into great detail in these matters for there is a statement in the order of the Tribunal, the fact-finding authority, that reads thus :



ITA No.2942/Mum/2022
A.Y. 2011-12
Sweta Samir Shah

"We will straightway agree with the assessee's submission that the ITO had not given to the assessee proper opportunity of being heard . " That the assessee could have placed evidence before the first appellate authority or before the Tribunal is really of no consequence for it is the assessment order that counts . That order must be made after the assessee has been given a reasonable opportunity of setting out his case . We, therefore, do not agree with the Tribunal and the High Court that it was not necessary to set aside the order of assessment and remand the matter to the assessing authority for fresh assessment after giving to the assessee a proper opportunity of being heard .

2 . Two questions were placed before the High Court, of which the second question is not pressed . The first question reads thus :

"1 . Whether, on the facts and in the circumstances of the case, the Tribunal was justified in not setting aside the assessment order in spite of a finding arrived at by it that the Income-tax Officer had not given a proper opportunity of hearing to the assessee ? "

In our opinion, there can only be one answer to this question which is inherent in the question itself: in the negative and in favour of the assessee .

3 . The appeals are allowed . The order under challenge is set aside . The assessment orders, that of the Commissioner (Appeals) and of the Tribunal are also set aside . The matter shall now be remanded to the assessing authority for fresh consideration, as aforestated . No order as to costs . "



ITA No.2942/Mum/2022

A.Y. 2011-12

Sweta Samir Shah

5. Since we have found in the present case that no proper opportunity the assessee got before the AO, we relying on the aforesaid decision of the Hon'ble Supreme Court in the case of **Tin Box Company (supra)** set aside the impugned order of the Ld. CIT(A) and remand the same back to the file of the AO and direct the AO to frame the assessment de-novo after hearing the assessee in accordance to law. The assessee is at liberty to file documents/material/written submission before the AO to substantiate its return of income. And we direct the assessee to be diligent before the AO during the assessment proceedings as undertaken before us.

9. In the result, the appeal of the assessee are allowed for statistical purposes.

Order pronounced in the open court on this 31/01/2023.

Sd/-

(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Sd/-

(ABY T. VARKEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 31/01/2023.
Vijay Pal Singh, (Sr. PS)



ITA No.2942/Mum/2022

A.Y. 2011-12

Sweta Samir Shah

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai