

आयकर अपीलीय अधिकरण
मुंबई पीठ " सी ", मुंबई
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री अमरजीत सिंह, लेखाकार सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH " C ", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER
आअसं.40/मुं/2023 (नि.व. 2014-15)
ITA NO.40/MUM/2023(A.Y.2014-15)

Prakash Jankilal Jaju,
B-706, Tranquility CHSL,
Shastri Nagar, Lokhandwala Complex,
Andheri (West), Mumbai 400 053.
PAN: AADPJ-0253-H

..... अपीलार्थी/Appellant

बनाम Vs.

Income Tax Officer 16(1)(3),
Room No.467,
Aaykar Bhavan, M.K.Road,
Mumbai 400 020

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Nilesh Dosi
प्रतिवादी द्वारा/Respondent by : Ms. Shreekala Pardesi
सुनवाई की तिथि/ Date of hearing : 13/04/2023
घोषणा की तिथि/ Date of pronouncement : 13/04/2023

आदेश/ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Commissioner of Income Tax(Appeals), National Faceless Appeal Centre, Delhi [in short 'the CIT(A)'] dated 16/12/2022, for the Assessment Year 2014-15.

2. Shri Nilesh Dosi appearing on behalf of the assessee submits that the Assessing Officer in assessment proceedings has made addition of

Rs.61,38,350/- u/s. 68 of the Income Tax Act, 1961 [in short 'the Act']. The Assessing Officer has made addition of the cash deposits in the bank without taking note of the withdrawals. The assessment order was passed u/s. 144 of the Act. The assessee carried the issue in appeal before the CIT(A). The assessee furnished all relevant documents before the First Appellate Authority. The CIT(A) failed to consider the documents filed by the assessee and passed the impugned order observing that the assessee should have produced these documents before the Assessing Officer in the course of assessment proceedings. The Id. Authorized Representative for the assessee prayed for restoring the issue back to the file of Assessing Officer. The Id. Authorized Representative assured that if an opportunity is allowed before the Assessing Officer, the assessee would comply with the directions of the Assessing Officer.

3. Ms. Shreekala Pardesi representing the Department supported the impugned order and submitted that the assessee was non-cooperative in assessment proceedings, hence, the Assessing Officer completed the assessment invoking the provisions of section 144 of the Act.

4. We have heard the submissions made by rival sides. A perusal of assessment order reveals that the assessee despite repeated opportunities failed to appear before the Assessing Officer, either in person or through Authorized Representative. The Assessing Officer in the assessment order dated 23/12/2016 has reproduced one of the communications received from assessee seeking adjournment beyond 31/12/2016. The Assessing Officer had no other option but to complete the assessment invoking provisions of section 144 of the Act, or otherwise assessment would have become time

barred. The conduct of the assessee before the Assessing Officer clearly shows callous and casual approach of the assessee. The Assessing Officer had issued notice u/s. 143(2) of the Act on 31/08/2015. Thereafter, notice u/s. 142(1) was issued on 26/06/2016. Six months time was available to assessee from the date of notice u/s. 142(1) of the Act for making submissions before the Assessing Officer. The assessee choose not to co-operate and produce relevant documents for enabling the Assessing Officer to complete the assessment. The assessee furnished documents before the CIT(A) in First Appellate proceedings. The CIT(A) dismissed the appeal of assessee without taking cognizance of the documents furnished during the appellate proceedings.

5. Taking into consideration entire facts of the case and in the interest of justice, the appeal is restored to the Assessing Officer for fresh adjudication after taking into consideration the relevant documents filed by the assessee before CIT(A). This is a protracted litigation resulting from non-cooperative and unruly conduct of the assessee. Before restoring this appeal to the Assessing Officer we feel that it is a fit case for levy of cost. Consequently, cost of Rs.10,000/- is imposed on the assessee to be paid in accordance with Rule - 32A(2) of the Income Tax (Appellate Tribunal) Rules 1963. Upon payment of cost by the assessee, the Assessing Officer shall make assessment denovo in the light of our above observations. The impugned order is set aside and the appeal of assessee is allowed for statistical purpose, in the terms aforesaid.

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

Order pronounced in the open court on Thursday the 13th day of April, 2023.

Sd/-

(AMARJIT SINGH)

लेखाकार सदस्य/ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated 13/04/2023

Vm, Sr. PS(O/S)

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt.Registrar)/Sr. Private Secretary ITAT,
Mumbai