

IN THE INCOME TAX APPELLATE TRIBUNAL "F" BENCH, MUMBAI

BEFORE SHRI ABY T. VARKEY, JM AND SHRI AMARJIT SINGH, AM

आयकर अपील सं/ I.T.A. No.2304/Mum/2023

(निर्धारण वर्ष / Assessment Year: 2011-12)

Mrs. Varsha Kaushik Shah 5, Bhaveshwar Vihar II, 383, S. V. P Road, Mumbai- 400004.	बनाम/ Vs.	ACIT, Ward 15(1) Room No.451/480, Aayakar Bhavan, M. K. Road, Mumbai-400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AVZPS7401F		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Ms. Simoni Chouhan/Rashmi Vyas
Revenue by:	Shri Ujjawal Kumar Chavan (Sr. AR)

सुनवाई की तारीख / Date of Hearing: 27/09/2023

घोषणा की तारीख /Date of Pronouncement: 17/10/2023

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee company against the order of the Ld. Commissioner of Income Tax (Appeals)/(NFAC), Delhi dated 27.04.2023 for the assessment year 2011-12.

2. At the outset, the Ld. AR of the assessee Ms. Simoni Chouhan submitted that the impugned order of the Ld. NFAC is an *ex-parte* order without hearing the assessee. According to her, the AO had passed the assessment order on 07.03.2014 and the assessee had filed the appeal before the Ld. CIT(A) (*during the physical regime*) and the assessee had filed the additional evidences before the Ld. CIT(A) who had called for the remand report from the AO which was evident from



ITA No.2304/Mum/2023

A.Y. 2011-12

Mrs. Varsha Kaushik Shah

the fact that AO in-turn had sought from assessee certain relevant documents in the remand proceedings. According to the Ld. AR, thereafter, the appeal of the assessee got migrated to the faceless regime on 12.02.2021. And thereafter, the assessee did not receive any notices from the Ld. NFAC. According to her, even though the Ld. NFAC has mentioned about the issuance of five (5) notices, she said that the assessee never received any notices of hearing. In this regard, it is noted that even though Ld.NFAC states to have issued five notices, but there is no assertion on the part of Ld.NFAC that the assessee have been served the notices. According to assessee, due to technical glitches, the notices might not have been served upon the assessee. According to the Ld. AR, even if it is assumed that the assessee was served the copy of notice but did not appear before the Ld.CIT(A), the appeal was required to be disposed off on merits as already ordered by the Hon'ble Bombay High Court in the case of CIT v. Premkumar Arjundas Luthra HUF reported in (2017) 291 CTR 614 (Bom.), Moreover, it was brought to our notice that the Ld. CIT(A) has not passed the impugned order in accordance to sub-section (6) of section 250 of the Income Tax Act, 1961 (hereinafter "the Act"). i.e. Ld.NFAC has not decided the grounds of appeal raised by the assessee in accordance to section 250 (b) of the Act. In such a factual backdrop, we are of the considered view that the assessee ought to have been heard before the passing impugned order and decide the grounds of appeal in accordance to sub-section (6) of section 250 of the Act. Therefore, the impugned order is set aside and the appeal restored back



ITA No.2304/Mum/2023
A.Y. 2011-12
Mrs. Varsha Kaushik Shah

to the file of the Ld. CIT(A)/NFAC with a direction to adjudicate the grounds of appeal in accordance to sub-section (6) of section 250 of the Act. The Ld. AR/assessee is directed to file relevant documents/written submissions to support the grounds of appeal raised before the First Appellate Authority and may request for hearing in accordance to Rules if assessee desires. And the Ld. CIT(A) to pass the order in accordance to law after hearing the assessee.

3. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on this 17/10/2023.

Sd/-

(AMARJIT SINGH)
ACCOUNTANT MEMBER

Sd/-

(ABY T. VARKEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 17/10/2023.
Vijay Pal Singh, (Sr. PS)

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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