

lakhs during the year under consideration. The assessee did not file any return of income for this year. Based on the information about the purchase of property, the Assessing Officer reopened the assessment of the instant year u/s. 147 of the Act. However, the Assessing Officer has served all the notices to the old address of the assessee. However, the assessee had sold the same in June,2018 itself. Further, the e-mail id of earlier tax consultant had been given to the department and he also did not inform about the notices issued by the AO. Hence, the assessee was not aware of the notices issued by the Assessing Officer and hence the assessee could not respond to any of the notices. Since, there was no response from the assessee, the Assessing Officer completed the assessment to the best of his judgment u/s. 144 r.w.s. 147 of the Act on 09/12/2019. The assessee was also not aware of the order so passed by the Assessing Officer.

3. Subsequently, a lien was created on the balance outstanding in the bank account of the assessee on 20/03/2020. At that point of time only, the assessee came to know about the assessment order passed by the Assessing Officer. The Ld A.R submitted that the date of service of assessment order should be reckoned as 20/03/2020 only, since the assessee became aware of the assessment order on that date only. Immediately, the assessee took steps to file appeal before the Id. CIT(A). By that time, COVID-19 pandemic started and all the private offices were shut. Hence the assessee could not file appeal within 30 days from the date when he came to know of the passing of assessment order. Despite the prevailing COVID situation, the assessee could file appeal before Ld.CIT(A) on 01/03/2021. The Ld A.R submitted that there was no delay in filing appeal in view of the facts mentioned above. However,

the Ld CIT(A) has computed the delay as 783 days and accordingly dismissed the appeal of the assessee in-limine without condoning the delay.

4. The Id.AR reiterated that the assessee came to know about the assessment order only on 20/03/2023 and the said date should be reckoned as date of service of the assessment order. Further, the time limit was extended by the Hon'ble Supreme Court of India due to COVID -19 pandemic till May, 2022. Accordingly, the Id.A.R submitted that there was no delay in filing of the appeal before the Id.CIT(A). The Ld A.R further submitted that the order passed by Ld CIT(A) should be set aside.

5. The Id A.R further submitted that the Ld CIT(A) has not passed the order on merits. Further, the assessing officer has also passed the order u/s 144 of the Act. Thus, the assessee did not get proper opportunity before the AO to explain his case properly. He submitted that the AO has assessed the entire value of property in the hands of the assessee, while the share of assessee in that was only 20%. Accordingly, she prayed that entire issues may be restored to the file of the AO for examining them afresh and the assessee would be in a position to explain the sources for the investments made in the purchase of property.

6. We heard Ld D.R and perused the record. We notice that the assessee did not get opportunity to represent before the AO. It is stated that the notices were sent to the old address of the assessee and the said premises had been sold in June, 2018 itself. It is stated that the e-mail given to the department belonged to earlier tax consultant, who also did not inform about the notices. It is stated that the assessee came to know of the assessment order, only when he came to know about the lien marked in his bank account. Thereafter, the

assessee could file before Ld CIT(A), even though the covid pandemic was continuing. In view of the above explanations given by the assessee, we are of the view that there was reasonable cause for the assessee in filing the appeal belatedly before Ld CIT(A). Accordingly, we are of the view that the Ld CIT(A) was not justified in not condoning the delay. Considering the explanations given by the assessee, we condone the delay in filing the appeal before Ld CIT(A).

7. Since the Ld CIT(A) has not adjudicated the appeal of the assessee on merits, normally, all the issues need to be restored to his file for adjudicating them on merits. However, it is submitted that the share of the assessee in the property purchased was only 20%, while the entire value of property has been assessed in his hands by the AO. Further, it is the submission of the assessee that he has paid only a sum of Rs.40.00 lakhs during the year under consideration. Thus, we notice the facts relating the addition also require detailed examination. Hence, we find merit in the prayer of Ld A.R. Accordingly, we restore all the issues to the file of the AO for examining them afresh, after affording adequate opportunity of being heard. The assessee is also directed to fully co-operate with the assessing officer for expeditious completion of set aside proceedings.

8. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 25th April, 2024.

Sd/-

[Justice (Retd) C V Bhadang]
President

Mumbai, Date : 25th April, 2024

VM.

Sd/-

(B.R. Baskaran)
Accountant Member

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT concerned
- 4) The D.R, "B" Bench, Mumbai
- 5) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai