

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

**BEFORE SHRI NARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER AND  
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER**

**ITA 1084/Mum/2024  
(Assessment year: 2012-13)**

<b>Late Radha Kishin Bhatia</b> (Through Legal Heir Kishin M Bhatia), B-1201, 64, Green Co-operative Housing Society Ltd, Coner of Green Street, Santacruz (West), Mumbai-400 054 <b>PAN : ALBPB3902E</b>	<b>vs</b>	<b>ITO, INT TAX WARD 1(2)(1), Mumbai</b>
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by : None  
Respondent by : Shri Anil Sant – Addl.CITDR  
Date of hearing : 20/06/2024  
Date of pronouncement : 21/ 06/2024

**ORDER**

**PER ANIKESH BANERJEE, J.M:**

Instant appeal of the assessee is preferred against the order of the Learned Commissioner of Income-tax (Appeals)-55, Mumbai [for brevity, 'Ld.CIT(A)'] passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), for Assessment Year 2012-13, date of order 09.01.2024. The impugned order was emanated from the order of the Id. Income-tax Officer, (Intt. Tax)-1(2)(1), Mumbai

(in short, 'the A.O.')

passed under section 144 r.w.s. 147 of the Act date of order30/12/2019.

2. The assessee has taken the following grounds of appeal: -

**“Ground 1** *On the facts and circumstances of the case, and in Law, CIT (A) erred in confirming an order u/s 144 of the Act passed by the Income Tax Officer – (IT)-1(2)(1), Mumbai (The A.O) Citing nonattendance. The Appellant is a Non-resident and had E-mail id used in the profile and Form 35 belonged to the earlier CA and thus did not receive any notices. The appellant was not aware and familiar with the Income Tax portal and thus not access the portal also. The order passed without giving proper opportunity to the appellant is bad at law. The learned CIT (A) erred in not deciding the appeal on merits and ignoring the submissions made during the filing of appeal, and showing his inability to understand/reconcile with the paper submitted.*

**Ground 2** *On the facts and circumstances of the case, and in Law, CIT (A) erred in confirming as order u/s 144 of the Act passed by the Income Tax Officer – (IT)-1(2)(1), Mumbai (The A.O) by making addition of Rs. 70,85,657/- of short term capital gains based on sales of shares as per AIR data: -*

*a. The addition was made of total sale value of shares, ignoring the purchase cost of the shares.*

*b. The addition is confirmed ignoring the period of holding was more than 12 months, which was admitted and mentioned in the order by CIT (A). Therefore, Appellant therefore prays that addition of Rs.70,85,657/- of short-term capital gains based on sales of shares as per AIR data may please be deleted.*

**Ground 3** *On the facts and circumstances of the case, and in Law, CIT (A) erred in confirming as order u/s 144 of the Act passed by the Income Tax Officer – (IT)-1(2)(1),*

*Mumbai (The A.O) by making addition of Rs. 3,00,403/- to income from other sources based on 26AS of the assessee:-*

*a. The CIT(A) failed to appreciate that there were duplicate entries appearing in the 26AS of the assessee.*

*b. The actual income was exactly half of the impugned amount. c. Copy of 26AS was filed while filing the appeal. Therefore, Appellant therefore prays that addition of Rs.3,00,403/- to income from other sources based on 26AS of the assessee may please be deleted. The appellant craves leave to add to, and / or amend the above grounds of appeal.”*

3. The brief facts of the case are that the assessee is deceased. The appeal of the assessee was filed through legal heir, Shri Kishin M. Bhatia. The assessment was framed exparteU/s 144 of the Act with an addition of short-term capital gain amount to Rs.70,85,657/- and income from other sources Rs.3,00,403/- which works out to total amount of Rs.73,86,060/-. The entire addition was added back with the total income of the assessee. The aggrieved assessee filed an appeal before the Id. CIT(A). The Ld.CIT(A) passed the order exparte and upheld the assessment order. Being aggrieved, the assessee filed an appeal before us.

4. When the appeal was called for hearing, none was present on behalf of the assessee. No adjournment petition was filed. Considering the issue and merit of the case, we are disposing the appeal petition exparte qua for assessee after hearing the Ld.DR.

5. We heard the submission of the Ld.DR, considered the documents available in the record and perused the orders of the revenue authorities. The addition was completed exparte under section 144. In the appeal order, the Ld.CIT(A) has

categorically mentioned the noncompliance of the assessee. The relevant paragraphs are reproduced as below: -

*“5. As regards the next ground relating to providing the basic details eg. Name, address, PAN, TAN of the 13 parties for which information was sought by the officer is concerned the AO mentioned in the assessment order that why Rs. 3,41,786/- should not be treated as unexplained expenditure in absence of proof of source of payment.*

*5.1 I have gone through the show cause notice dated 07.12.2022 wherein the AO has not given the name, address and PAN of the people, whose information was asked for by the AO. In the absence of complete information in the show cause notice, it is not justified for the AO to make an addition of the amount shown in show cause notice. Secondly, the appellant has sufficient income in the relevant year hence treating the payment as unexplained without any reasonable reason/document is not justifiable. Hence, the addition made by AO in this regard is deleted.”*

6. The Ld.CIT(A) had disposed the appeal with ground-wise discussion in the appeal order. But the assessee was not getting a reasonable opportunity before any of the revenue authority. Further, the assessee is no more, and an appeal is filed through the legal heir. The matter of the assessee is exparte in both the stages. We are, therefore, of the opinion that interest of justice would be subserved if the impugned order is set aside and the matters are remitted back to the Id. AO for consideration thereof afresh. We are not expressing any views on the merits of the case so as to limit the assessment procedure before the Ld.AO. Needless to say, the assessee should get a reasonable opportunity of hearing for

setting aside proceedings. On the other hand, the assessee should be diligent in set aside assessment proceeding for expeditious disposal of assessment.

7. In the result, **ITA No.1084/Mum/2024** is allowed for statistical purposes.

Order pronounced in the open court on 21<sup>st</sup> day of June 2024.

Sd/-

sd/-

(NARENDRA KUMAR BILLAIYA)  
ACCOUNTANT MEMBER

(ANIKESH BANERJEE)  
JUDICIAL MEMBER

Mumbai, दिनांक/Dated: 21/06/2024

Pavanan

**Copy of the Order forwarded to:**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,  
Mumbai
5. गार्डफाइल/Guard file.

BY ORDER,

//True Copy//

(Asstt. Registrar), ITAT, Mumbai