

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH “H (SMC)”, MUMBAI**

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI OMKARESHWAR CHIDARA, ACCOUNTANT MEMBER**

**ITA No.1748/M/2024
Assessment Year: 2017-18**

Late Shri Jetha Verva Chavada represented through legal Heir Mrs. Dayaki Jetha Chavada, C-45,/ S-7, Sector-14, Vashi Navi-Mumbai – 400 703 PAN: AEMPC2872E	Vs.	ITO Ward 28(1)(1), Tower No.6, Vashi Railway Complex, Vashi, Navi-Mumbai-400703
(Appellant)		(Respondent)

Present for:

Assessee by : Shri V.D. Parmar, A.R.
Revenue by : Ms. Dhivya Ruth J., Sr. D.R.

Date of Hearing : 16 . 07 . 2024
Date of Pronouncement : 24 . 07 . 2024

O R D E R

Per : Satbeer Singh Godara, Judicial Member:

This appellant's/assessee's alleged legal representative "LR's" appeal for assessment year 2017-18, arises against the National Faceless Appeal Centre(NFAC) Delhi's DIN & order No.ITBA/NFAC/S/250/2023-24/1060872915(1) dated 13.02.2024, in proceedings u/s.147 r.w.s. 144 of the Income Tax Act, 1961 (in short 'the Act').

2. Heard both the parties at length. Case file perused.
3. The appellant pleads the following substantive grounds in the instant appeal:

“1. On facts and circumstances of the case and in law Ld. CIT(A) erred in dismissing the appeal.

2. On facts and circumstances of the case and in law Ld CIT(A) erred in dismissing appeal as the order passed by Ld CIT(A) is not in accordance with the mandate of section 250 of the IT Act as Ld CIT(A) cannot dismiss appeal on account of non- prosecution of appeal by assessee. Reliance is placed on decision of CIT vs Premkumar Arjundas Luthra (HUF) 69 taxmann.com 407 (Bom).

3. On facts and circumstances of the case and in law Ld CIT(A) erred in passing ex-parte without giving adequate opportunity of being heard to appellant.

4. Without prejudice to other grounds of appeal, on facts and circumstances of the case and in law Ld CIT(A) erred in dismissing appeal without considering merits of addition of Rs 12,58,000/-.

5. On facts and circumstances of the case and in law Ld CIT(A) erred in passing ex parte order without considering merits of reopening of case us 147 and issue of notice us

148 of the IT Act 1961 as same were not reopened/issued in accordance with the law.

6. The assessee has not been provided by AO copy of reasons recorded us 147 and approval us 151 of higher authority though request is made before AO. Assessee may be given opportunity of filing additional grounds of appeal, if any, on receipt of said documents.

7. On facts and circumstances of the case and in law Ld. AO erred in reopening the case us 147 of the IT Act without appreciating the fact that assessee is in business of Kirana and geheral store and cash deposits of Rs 12,58,000/- were out of cash sell which were properly reflected in cash book and such deposits were made out of cash on hand as on 8-10-2016 as per cash book.

8. The appellant craves leave to consider each of the above ground of appeal as independent and without prejudice to each other and craves leave to add, alter, modify or delete any or all grounds of appeal.”

4. It emerges during the course of hearing at the outset with the able assistance coming from both the parties that the CIT(A)/NFAC herein has dismissed the assessee's lower appeal for non prosecution thereby confirming the Assessing Officer's action initiating section 148 proceedings culminating in

section 69A addition of Rs.12.58 lakhs. We further note that the Assessing Officer had framed his impugned re-assessment on 15.02.2022. The assessee instituted the corresponding lower appeal on 23.09.2022 which has resulted in the CIT(A)/NFAC's impugned ex-parte order rejecting it for non prosecution.

5. We sought to know the reason of assessee's non appearance. Learned counsel submits that the assessee herein Shri Jetha Verva Chavada left for his heavenly abode on 20.05.2018 i.e. during the course of re-assessment itself. And that it was in fact his wife (present appellant) Mrs. Dayaki Jetha Chavada who had signed form 35 in the lower appeal and she has been prosecuting the same all along since the assessee's demise on 20.05.2018. Faced with this situation and in the light of the fact that the appellant herein Mrs. Dayaki Jetha Chavada who claims herself to be the deceased assessee's legal representative, has nowhere been impleaded as such in tune with section 2(29) of the Act r.w.s. 2(11) of the Code of Civil Procedure, 1908, we deem it appropriate to restore the present appeal back to the CIT(A) to first determine

the question of her status as legal representative and then decide the corresponding lower appeal on merits as per law. Ordered accordingly. We make it clear while parting with we have not expressed any opinion on either the appellant's status as the legal representative of the deceased assessee or qua merits of the issue(s), as the case may be.

6. This appellant's appeal is allowed for statistical purposes in above terms.

Order pronounced in the open court on 24.07.2024.

**Sd/-
(OMKARESHWAR CHIDARA)
ACCOUNTANT MEMBER**

**Sd/-
(SATBEER SINGH GODARA)
JUDICIAL MEMBER**

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.