

IN THE INCOME TAX APPELLATE TRIBUNAL
Mumbai "SMC" Bench, Mumbai.

Before Shri Prashant Maharishi (AM)

I.T.A. No. 465/Mum/2024 (A.Y. 2010-11)

Jyoti Deepak Gupta 2, Girnar Apartments 10 Doongershi Road Teenbati, Malbar Hill Mumbai-400 006. PAN : AKOPG3428J (Appellant)	Vs.	ITO Ward 17(2)(1) Kautilya Bhavan Bandra Kurla Complex Bandra East Mumbai-400 051. (Respondent)
---	-----	--

Assessee by	Shri Satya Prakash Singh
Department by	Shri R.R. Makwana
Date of Hearing	12.06.2024
Date of Pronouncement	12.08.2024

ORDER

1. This appeal is filed by Ms. Jyoti Deepak Gupta (the assessee/appellant) for assessment year 2010 – 11 against the appellate order passed by The Commissioner Of Income Tax (Appeals) And Additional CIT (A), 2, Ludhiana (the learned CIT – A) dated 17/01/2024 wherein the appeal filed by the assessee against the assessment order passed under section 144 of The Income Tax Act, 1961 (the act) passed by The Income Tax Officer, Ward 17 (2) (1), Mumbai (the learned AO) dated 26/12/2017 was dismissed.

2. Aggrieved assessee has raised the grounds of appeal contesting that that the appellate order has been passed against the principles of natural justice without giving any opportunity and confirming the addition of Rs. 14, 30,597.
3. The brief facts of the case show that the assessee has not filed any return of income therefore as per the AR information it was found that assessee has entered into a transaction of 226,96,93,441/- and assessee has not filed any return of income. The assessee was informed on 6/2/2013 and 23/8/2013 that as per record the assessee has not filed return of income. The assessee submitted that the return is under preparation and would be submitted by the end of September 2013 however the assessee did not file any return of income to the date of recording of the reasons.
4. Accordingly notice under section 148 of the act was issued on 31/3/2017. There was no compliance of such notice. Therefore, a summons under section 131 of the act was issued on 10/11/2017 but nobody attended. As the assessee has not complied with notice under section 148 , summons under section 131, therefore, notice under section 144 of the act was issued to the assessee. It was found that the assessee has entered into a share trading transaction to the tune of Rs. 2,269,687,596 through Vijeta stock broking India private limited and assessee has also received interest from Kotak Mahindra bank of 5845/-, Ld. AO issued notice under section 133 (6) to the broking company and statement was found wherein assessee has earned a profit of Rs. 149,011 in

derivative transaction and Rs. 1,281,504 in cash market aggregating to Rs. 14,30,596. Show cause notice was served to the assessee but no compliance was made. Therefore, the learned assessing officer made an addition of Rs. 1,285,586 from share trading in cash market segment and income of Rs. 149,011/- from trading in derivative segment is speculation income. The income from other sources of Rs. 12,085 was also added on the basis of statement received under section 133 (6) of the act. Total income was assessed at Rs. 1,442,680/- by assessment order under section 144 read with section 147 of the income tax act on 26/12/2017.

5. Aggrieved assessee preferred an appeal before the learned CIT – A. However, despite giving 12 opportunities to the assessee, no reply was submitted and therefore the learned CIT – A confirmed the action of the learned assessing officer.
6. Assessee aggrieved with the appellate order has preferred the appeal before us. Assessee before us submitted that there is no opportunity of hearing to the assessee because the notice for hearing were emailed at the old address of the appellant which has got deactivated and therefore could not be served upon him. Nothing was submitted on merit, but it was submitted that assessee has incurred an expenditure of Rs. 599,899/- on the above income from speculation and non-speculation and therefore such deduction should be granted to the assessee. No details were furnished before us.
7. The learned departmental representative vehemently supported the order of the learned lower authorities and submitted that

assessee is totally non-compliant before the lower authorities and the income is determined by obtaining the confirmation under section 133 (6) of the act from the share broker and banker, therefore, now nothing is required to be stated. Even the bank interest has been added on the basis of the information obtained from bank. He submitted that assessee was granted 12 opportunities before the learned CIT – A but did not respond to any of them and therefore now there is no fault found with the orders of the lower authorities.

8. We have carefully considered the rival contention and perused the orders of the learned lower authorities. We find that the assessment order under section 144 was passed by the learned assessing officer as the assessee remained totally non-compliant before him despite having information that assessee is a trader on stock exchange and has earned profit on derivative and said trading account. The information was obtained under section 133 (6) of the act from the share brokers. Based on this the income was determined. Even the bank interest income was also determined on the basis of the statement obtained from the banks. Therefore, it is true that the assessee remained totally non-compliant before the learned assessing officer. However, before us the challenges to the order of the learned CIT – A. It is the contention of the assessee that assessee has filed an appeal on 23/2/2018 at that time the email ID of the assessee was given at Deepak.gupta@grofers.com. Naturally the learned CIT – A could have sent notices at that address only. The first notice

was issued on 28/11/2019 and second notice was issued on 11/12/2019. There is no compliance with respect to both these notices. However subsequently the notices were issued in the month of January 2021 and the last notice was issued on 10/1/2024. Now, it is the claim of the learned authorized representative that the email ID cited by the assessee of her husband was not active during that period and therefore notices could not be complied from 2021 till 2024. Naturally therefore there is no service of notice to the assessee. It is the duty of the assessee to intimate the office of the learned CIT – A if there is a change in the communication address. But assessee has not intimated. Therefore, the appellate order was passed ex parte confirming the action of the learned assessing officer of assessment order passed under section 144 of the act. In view of the above facts, we find that it would not serve any purpose if the issue were restored back to the file of the learned CIT – A because the assessee is non-compliant before the AO as well as before the learned CIT – A. In view of this, we restore the whole matter back to the file of the learned assessing officer with a direction to the assessee to submit all the details before the learned assessing officer within 90 days from the date of receipt of this order contesting or disclosing the correct income earned by the assessee. If the assessee also says that she has incurred certain expenditure, same is also required to be substantiated before the assessing officer. The learned assessing officer, if the assessee submitted such detail, may pass order on the merits of the case after examination of

the details and giving assessee opportunity of hearing, if asked for. If the assessee does not submit any information, the learned assessing officer is free to repeat the order already passed.

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

Order pronounced in the open court on 12th August 2024.

Sd/-
(Prashant Maharishi)
Accountant Member

Mumbai : 12.08.2024

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai.
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

PS