

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ "ई" मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL "E" BENCH, MUMBAI
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A.No.6072/Mum/12
(निर्धारण वर्ष / Assessment Year: 2003-04)

Mrs. Sadhana M. Shah 22, Meera Flats, 4 th Floor, L.D.Ruparel Marg, Mumbai - 400006	बनाम/ Vs.	ITO 16(2)(2) Room No.214, 2 nd Floor, Matru Mandir, Tardeo, Mumbai - 400007
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAVPS7994L		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Snehal J. Shah
Department by:	Shri Kamal Mangal

सुनवाई की तारीख / Date of Hearing: 28.04.2016

घोषणा की तारीख /Date of Pronouncement:10.08.2015

आदेश / ORDER

PER AMARJIT SINGH, JM:

The assessee has filed the present appeal against the order dated 08.08.2012 passed by the Commissioner of Income Tax (Appeals) 28, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y. 2003-04.

2. The assessee has raised the following issues:

- I. "1. The Commissioner of Income Tax (Appeals) – 28 [CIT(A)] erred in rejecting the appellant's pleas that the issuance and service of notice u/s.143(2) of

the Income Tax Act (“the Act”) beyond the stipulated time and vitiated the assessment proceedings and consequently rendering the entire assessment proceedings ab initio void, illegal, bad in law and without jurisdiction.

2. The appellant prays that the assessment be quashed as being invalid and without jurisdiction.

Without prejudice to above;

II. 1. The CIT(A) erred in upholding the assessing officers action of treating repair expenses of Rs.15,33,808/- as capital in nature.

2. The appellant prays that the repair expenses be allowed as revenue expenditure.

Without prejudice, the appellant prays that in the event the assessing officers contentions is upheld then depreciation at the applicable rates be allowed on such capital expenditure.

III. 1. The CIT(A) erred in upholding the disallowance of 25% of salary expenditure on the ground that the same were quite high and excessive.

2. The appellants prays that the disallowance of Rs.1,02,000/- be deleted.

IV. 1. The CIT(A) erred in upholding the disallowance of Rs.1,29,392/- on account of interest paid on borrowed funds.

2. The appellant prays that the disallowance of Rs.1,29,392/- be deleted.

V. 1. The CIT(A) erred in not giving any findings on the appellant’s claim for allowing exemption of Rs.8,01,000/- u/s.54F of the Act.

2. The appellant prays that exemption u/s.54F be allowed to her.

3. The brief facts of the case are that the assessee filed her return of income on 19.11.2003 declaring total income to the tune of Rs.13,76,040/-. The return was accompanied by tax audit report u/s.44AB in form no.3CB and 3CD, balance sheet and profit and loss account and annexures, in the case of M/s.Sadhna Engineering Corporation and also M/s. Sadhana Office Business Centre separately, and TDS certificates, computation of income etc. The return was processed u/s.143(1) of the Income Tax Act, 1961 (in short “the Act”). Thereafter, the return u/s.143(2) issued and served upon the assessee. Further notice u/s.143(2) and 142(1) of the Act along with questionnaire were issued and served upon the assessee. The assessee was carrying on business as the proprietor of (1) M/s. Sadhana Engineering Corporation and (2) M/s. Sadhana Business Centre. In addition, the assessee had earned Long Term Capital Gain and income from other sources. The assessment of the assessee was completed by the assessing her income to the tune of Rs.46,85,626/- u/s. 143(3) of the Act on 31.01.2006. The assessee was not satisfied with the said assessment, therefore filed an appeal before the CIT(A) who confirmed the assessment order u/s.143(3) of the Act. Therefore, feeling aggrieved the assessee has filed the present appeal before us.

ISSUE NO.-1:-

4. We have heard the arguments advanced by the learned representative of the parties and perused the record. The learned representative of the assessee has argued that the assessee has filed her return of income for the A.Y.2003-04 on 19.11.2003. The assessee received the notice u/s.143(2) of

the Act on 08.12.2005 dated 06.12.2005 beyond one year therefore the assessment u/s.143(3) of the Act is time barred in view of the law settled in *Commissioner of Income Tax, Chennai Vs. Gitsons Engineering Co. [2015] 53 taxmann.com 108 (Madras)*. It is also argued that it is necessary that the notice should be issued within the one year but factually the same should be served also within the one year which is not in her case. Therefore, the assessment u/s.143(3) is wrong against law and facts in view of the *law settled in Subham Enterprises Vs. Income Tax Officer [2004] 3 SOT 250 (All.) and Commissioner of Income Tax Vs. Bhan Textiles Pvt. Ltd. [2006] 287 ITR 370 (Delhi) and Prakash Ramji Gavali Vs. Income Tax Officer, Ward 3(1), Thane [2012] 21 taxmann.com 534 (Mum.) and BHPE Kinhill Joint Venture Vs. Additional Director of Income Tax, Range – 1 [2009] 116 ITD 123 (Delhi)*.

5. However, on the other hand the learned departmental representative has strongly relied upon the order passed by the CIT(A) in question. On appraisal of the assessment order on record it came into the notice that notice u/s.143(2) and 142(1) of the Act along with questionnaire were issued and served upon the assessee but the exact date of issuance of notice are not mentioned on record. The assessee filed her return of income on 19.11.2003 for the A.Y.2003-04. The copy of remand report dated 04.05.2011 on the file speaks that notice for the A.Y.2003-04 u/s.143(2) of the Act was issued on 24.11.2004 but nowhere speaks about the service of the said notice. The said report also speaks that the direct proof of service of first notice is not available on the record. In view of the said report, it is not on record about the service of notice issued on 24.11.2004. In brief the assessee filed her

return of income on 19.11.2003 and up to the one year there was no record on the file to which it can be assumed that the authority issued the notice and said notice has duly been served upon the assessee within one year. The assessment u/s.143(3) has been concluded without service of notice beyond the period of one year which does not seem justifiable and in accordance with law. In this regard we also find support of *law settled in Subham Enterprises Vs. Income Tax Officer [2004] 3 SOT 250 (All.) and Commissioner of Income Tax Vs. Bhan Textiles Pvt. Ltd. [2006] 287 ITR 370 (Delhi) and Prakash Ramji Gavali Vs. Income Tax Officer, Ward 3(1), Thane [2012] 21 taxmann.com 534 (Mum.) and BHPE Kinhill Joint Venture Vs. Additional Director of Income Tax, Range – 1 [2009] 116 ITD 123 (Delhi)*. Therefore, in view of the said circumstances we set aside the assessment order of the assessment year of 2003-04 in question u/s.143(3) of the Act. Accordingly this issue is being decided in favour of the assessee and against the revenue.

ISSUE NO.-2-5:-

6. The issue no.2 to 5 are on the merit of the case. While deciding the issue no.1 the assessment order u/s.143(3) of the Act in question has been ordered to be set aside, therefore, deciding the said issues is merely become an academic in nature hence not required to be adjudicated.

7. In the result the appeal filed by the **assessee is hereby allowed.**

Order pronounced in the open court on 10th August, 2016.

Sd/-

(D.KARUNAKARA RAO)

लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 10th August, 2016

MP

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai