

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

BEFORE SHRI JOGINDER SINGH, JUDICIAL MEMBER  
AND SHRI JASON P. BOAZ ACCOUNTANT MEMBER

ITA No. 364/MUM/2012  
(Assessment Year : 2007-08)

Smt.Naazish N Shah,  
C/o. M/s. Mitesh Mehta & Associates,  
432, Lamington Road, Opera House,  
2<sup>nd</sup> Floor, Above Dena Bank,  
Mumbai 400 006  
PAN:AABPS 3536Q ... Appellant  
Vs.

The ITO 11(3)1  
Mumbai 400 020 .... Respondent

Appellant by : Mrs. Mamta Parmar  
Respondent by : Shri Suman Kumar

Date of hearing : 05/01/2017  
Date of pronouncement : 11/01/2017

**ORDER**

**PER JASON P. BOAZ, A.M:**

This appeal by the assessee is directed against the ex-part order of the CIT(A)-2, Mumbai dated 25/11/2011 for assessment year 2007-08.

2. The facts of the case, briefly stated, are as under:-

2.1 The assessee an advocate by profession and also running a part time nursery school, filed her return of income for assessment year

2007-08 on 29/10/2007 declaring total income of Rs.2,98,728/-. The case was selected for scrutiny and the assessment was subsequently completed under section 143(3) of the Income Tax Act, 1961 ( in short 'the Act') vide order dated 24/12/2009, wherein the assessee's income was determined at Rs.11,61,818/- in view of the following additions/disallowances:-

(i) u/s 41(1) –Cessation of liability	-	Rs. 7,21,500/-
(ii)Household withdrawals	-	Rs. 94,218/-
(iii)Travelling expenses	-	Rs. 47,372/-

2.2 Aggrieved by the order of assessment for assessment year 2007-08 dated 24/12/2009, the assessee preferred an appeal before the CIT(A) . The CIT(A) dismissed the assessee's appeal ex-parte for non-appearance vide order dated 25/11/2011; following, inter-alia, the decision of the ITAT Delhi Bench in the case of CIT v. Multiplan (India) Pvt. Ltd, 38 ITD 320(Del).

3.1 Aggrieved by the order of the CIT(A) dated 25/11/2011 for assessment year 2007-08, the assessee has preferred this appeal raising the following grounds:-

1. *The learned Commissioner of Income-Tax (Appeals) erred in passing appellate order without giving any opportunity of being heard on specified date.*
2. *The learned Commissioner of Income-Tax (Appeals) erred in confirming the total addition of Rs. 7, 68,872/- without verifying the details.*
3. *The learned CIT (A) erred in law and in facts by not interpreting Sec 41 (1) correctly.*

4. The learned CIT (A) also erred on facts in disallowing Rs. 47,372 as travelling expenses without any proper reason or ground or without any opportunity of being heard.

5. The appellant craves to insert new grounds, and to add, amend, alter, insert, delete any of the above grounds of appeal either in full or in part on or before the final hearing of the appeal. 1-

4. **Ground No.1:-**

4.1 In this ground, the assessee assails the impugned order of the CIT(A) as being erroneously passed ex-parte without affording the assessee adequate opportunities of being heard. We have heard both the Ld. Representative for the assessee praying for the impugned order of the CIT(A) to be set aside for fresh hearing on merits and the Ld. Departmental Representative in the matter. The CIT(A)'s order dismissing the assessee's appeal ex-parte is extracted in entirety hereunder:-

*"The present appeal has been filed against the assessment order passed by the Income-tax Officer - 11(3)-1, Mumbai u/s. 143(3) of the I.T.Act, 1961 dated 24.12.2009. There has been continuous non compliance of notices of hearing in this case. The first notice was issued on 25/08/2011 fixing the case on 15/09/2011. On this date, an adjournment application was received and the case was adjourned to 07/10/ 2011.On this date nobody attended however an adjournment application was filed three days late on 10/10/2011 and the case was adjourned to 20/10/2011. On this date nobody attended nor any adjournment application was filed. Last opportunity was given by issue of notice on 14/11/2011 fixing the case on 25/11/2011. In response to this notice, nobody has attended nor any adjournment application has been filed. Therefore, it is apparent that the appellant is not interested in pursuing its appeal. Accordingly, in view of the decisions of Hon'ble . Madhya Pradesh High Court in Estate of Late Tukojirao Holkar vs CWT 223 ITR 480 (MP) and by the Delhi Bench of the Tribunal in. the case of CIT vs. Multiplan (India) Pvt. Ltd 38 ITD 320· (Del), this appeal stands dismissed."*

4.2 A perusal of the impugned order of the CIT(A)(supra) shows that the CIT(A) fixed this case for hearing on four occasions between 15/09/2011 and 25/11/2011 (i.e. within a period of 2 months) and admittedly the assessee sought adjournments of hearings. We find from the details filed that a third adjournment letter dated 14/11/2011 seeking adjournment of hearing fixed for 14/11/2011 by at least 15 days was also filed by the Ld. Authorized Representative of the assessee on 14/11/2011 itself (copy placed at page 26 of Paper Book), which though filed on the same day in the office of the CIT(A), finds no mention in the impugned order. For clarity, this letter is extracted in entirety.

*"14<sup>th</sup> November, 2011*

*The Commissioner of Income Tax (A)-2,*

*Dear Sir,*

*Ref: Shri Syed Nusrat Shah (PAN AADPS 7089N)*

*Sub: Appeal proceedings for assessment year 2007-08.*

*With reference to above, we have to state that there is very small matter in Nusrat shah case. We regretfully state that the briefcase in which appointment diary was kept was stolen in the train & therefore we have lost all the dates for all the appeal and all the IT notices, Articles, etc. Now we are in the process of reconstructing, entire notice file. so kindly hold Nusrat shah & Naazish shah hearing together and grant us new date after 15 days & oblige.*

*With regards,*

*For Mitesh Mehta & Associates,*

*Chartered Accountants,*

*Sd/-*

*Mitesh Mehta*

*Proprietor."*

A perusal of the assessee's letter dated 14/11/2011 gives the reasons for seeking adjournment by at least 15 days. We find, however, the CIT(A) ignoring the same, proceeded to fix the next hearing on 25/11/2011 and proceeded to dismiss the case ex-parte on 25/11/2011 itself.

4.2 In our view, as per the details of the case in hand in the impugned order and the material on records as laid out above, it appears that the CIT(A) has failed to afford the assessee proper and adequate opportunity of being heard by ignoring her letters seeking adjournment and hurriedly passing the impugned order thereafter. Be that as it may, the purpose of assessment/appellate proceedings is to bring to tax the true and the correct income of an assessee and in the case on hand this has not been done since the assessee's appeal has not been decided on merits by the CIT(A). We are of the view that it is imperative that the assessee's grounds raised before the CIT(A) be heard and decided on merits and that no loss would be caused to Revenue if the impugned order of the CIT(A) be set aside for being disposed off on merits as the true and correct income of the assessee will be brought to tax. In this factual and legal matrix of the case on hand, we set aside the impugned order of the CIT(A) dated 25/11/2011 for assessment year 2007-08 and restore the matter to the file of the CIT(A) for consideration and adjudication of the grounds raised before him (at S.No.1 to 7 dated 20/1/2010) after affording the assessee adequate opportunity to file details/evidences, submissions required and also to the Assessing Officer to rebut any fresh evidences filed. We

hold and direct accordingly. Consequently ground No.1 of assessee's appeal is allowed for statistical purposes as indicated above.

**Ground s No. 2 to 6 - On merits:**

5.1 In view of our setting aside the impugned order of the Ld. CIT(A) dated 25/11/2011 passed ex-part for assessment year 2007-08 to be heard and disposed off by the Id. CIT(A) on merits, we decline to adjudicate these grounds 2 to 5(supra) raised on merits on various issues in this appeal.

6. In the result, the assessee's appeal for assessment year 2007-08 is treated as allowed for statistical purposes as indicated above.

Order pronounced in the open court on 11 /01/2017

Sd/-  
(JOGINDER SINGH)  
JUDICIAL MEMBER  
Mumbai, Dated 11 /01/2017

Sd/-  
(JASON P. BOAZ)  
ACCOUNTANT MEMBER

**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//

Vm, Sr. PS

BY ORDER,

(Dy./Asstt. Registrar)  
ITAT, Mumbai