

आयकर अपीलीय अधिकरण "I" न्यायपीठ मुंबई में।

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

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No.2169/Mum/2015

(निर्धारण वर्ष / Assessment Year : 2010-11)

Smt. Beena Anto Puthiry, D/o Joseph Puthan Purackal, Unit No. 132, Andheri Industrial Estate, Veera Desai Road, Andheri (W), Mumbai - 400 053.	बनाम/ v.	ITO 20, (1)(2), Piramal Chambers, Lalbaug, Mumbai.
स्थायी लेखा सं./PAN : AMCPP9528L		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by :	Shri Neelkanth Khandelwal
Revenue by :	Shri Saurabhkumar Rai,DR

सुनवाई की तारीख / **Date of Hearing** : 03-01-2017

घोषणा की तारीख / **Date of Pronouncement** : 15-02-2017

आदेश / ORDER

PER RAMIT KOCHAR, Accountant Member

This appeal, filed by the assessee, being ITA No. 2169/Mum/2015, is directed against the appellate order dated 1st January, 2015 passed by the learned Commissioner of Income Tax (Appeals)- 36, Mumbai (hereinafter called "the CIT(A)"), for the assessment year 2010-11, the appellate proceedings before the learned CIT(A) arising from the assessment order dated 28th March, 2013 passed by the A.O. u/s 144 of the Income-tax Act, 1961 (Hereinafter called "the Act").

2. The grounds of appeal raised by the assessee in the memo of appeal filed with the Income-Tax Appellate Tribunal, Mumbai (hereinafter called "the Tribunal") read as under:-

"1. The learned CIT (A) erred in law by sustaining the Assessment order of the learned Assessing Officer without appreciating the facts and circumstances of the case and the provisions of the relevant statutory Enactments & Laws.

2. The learned CIT (A) completed the appellate proceedings without giving reasonable opportunity to the appellant and his authorized representative of being heard and to present before your Honor requisite supporting documents/ bills & voucher at any time on or before the hearing of the appeal.

3. The appellant is of the opinion that the learned CIT (A) erred in disallowing the under mentioned expenses & considering it as income by adding the same to the total income of the appellant without affordable reasonable opportunity of being heard as per the order of learned Assessing officer:

A. Computing the total income of the appellant of Rs.69,40,231/- as against the returned income of Rs. 15,01,040/- by passing ex-parte assessment order u/s 144 of the Act,1961.

B. Treating the difference of Rs. 25,91,528/- as undisclosed receipt which is the difference between the receipt disclosed in the Profit and Loss account of the appellant & total receipt as depicted by Form No 26AS & the said difference of Rs. 25,91,528/- is added to the total Income of appellant without appreciating the facts of the case.

C. Making an addition of Rs. 41,252/- as the total Income of the appellant being the difference in the comparison of the ledger account on comparison of the ledger account of the both the respective party.

D. Treating the purchase of Rs.10, 20, 275/- from M/s Surya TV as non-genuine & added the same to the total Income of appellant.

E. Making Proportionate disallowance of interest paid of Rs.14,400/- against interest free loans & advances given to the sister concerne for the purpose of the business by the appellant.

F. Making Notional addition of Rs. 2,66,000/- to the total income of the appellant by increasing the Gross profit ratio rate by 1% on the basis of whims & fancies & without appreciating the facts of the case.

4. The appellant prays before your Honor to give necessary direction/ instruction for the revision/ reassessment of the Assessment order in view of the requisite/ additional evidences to be made by the appellant who could not be presented by way of evidence at the time of assessment/ appellate proceedings due to the ill health of the authorized representative.

5. The appellant prays before your honor that all unwarranted & unjustified Additions, disallowances should be deleted & set aside on the basis of merit & facts of the case.

6. The appellant prays, before your Honor to grant the "Relief claimed" in Grounds of Appeal."

3. This appeal, filed by the assessee, is arising out of the order of the A.O. dated 28th March, 2013 passed ex-parte u/s 144 of the Act and on further appeal, the ld. CIT(A) has also passed ex-parte appellate order dated 1st January, 2015. Thus, in nutshell both the assessment order as well as appellate order are passed ex-parte in the absence of the assessee. The AO has made several additions in the assessment order dated 28-03-2013 passed u/s 144 of the Act which additions were confirmed by learned CIT(A) in first appeal vide appellate order dated 01-01-2015

4. The ld. Counsel for the assessee submitted that due to illness of the authorised representative of the assessee, he could not attend any of the proceedings before the A.O. as well as the ld. CIT(A) and an ex-parte order(s) were passed by the authorities below against the assessee. The ld. Counsel submitted that if an opportunity be given and the matter is set aside and restored to the file of the ld. CIT(A), then the assessee will enter appearance and shall produce necessary evidences and explanations to substantiate her case. It was submitted that due to genuine and bonafide reasons beyond the control of the assessee, the assessee could not produce the supporting evidence before the authorities below.

5. The ld. D.R., on the other hand, relied upon the order of the ld. CIT(A) and submitted that despite being given several opportunities, the assessee did not avail the said opportunities before the authorities below.

6. We have considered the rival contentions and also perused the orders of authorities below. On perusal of the records, it is observed that sufficient opportunity has been given by the Revenue to the assessee which is evident from the assessment order dated 28-03-2013 passed u/s 144 of the Act. Similarly, during appellate proceedings also, despite sufficient opportunity provided to the assessee, the assessee did not attend the proceedings. The assessee submitted that due to illness of the ld. Counsel for the assessee, the said learned counsel could not attend the proceedings before the authorities below and file necessary evidences. We have observed that both the orders of authorities below were passed ex-parte despite opportunity being given to the assessee. In our considered view, in the interest of justice, one more opportunity is required to be provided to the assessee and the issues are set aside and restored to the file of ld. CIT(A) to adjudicate the appeal of the assessee de novo after considering contentions of the assessee and evidences produced by her before learned CIT(A) in accordance with law. However, we would like to make it clear that we have taken a serious view of non-appearances of the assessee before the authorities below and in case if the assessee failed to appear before the ld. CIT(A) in de-novo proceedings and failed to produce the cogent and relevant material and evidences to substantiate her case, the ld. CIT(A) shall be at liberty to decide the appeal in accordance with law. The learned CIT(A) shall admit all relevant evidences and explanations filed by the assessee in her defense, which shall be admitted by learned CIT(A) in accordance with law. Needless to say that the learned CIT(A) shall provide reasonable and adequate opportunity of being heard to the

assessee in accordance with principles of natural justice in accordance with law. We order accordingly.

7. In the result, appeal filed by the assessee in ITA No. 2169/Mum/2015 for assessment year 2010-11 is allowed for statistical purposes.

Order pronounced in the open court on 15th February, 2017.

आदेश की घोषणा खुले न्यायालय में दिनांक: 15-02-2017 को की गई ।

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

sd/-
(RAMIT KOCHAR)
ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated 15-02-2017

I

व.नि.स./ R.K., Ex. Sr. PS

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)- concerned, Mumbai
4. आयकर आयुक्त / CIT- Concerned, Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai "I" Bench
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई/ ITAT, Mumbai