

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “A”, NEW DELHI
BEFORE SHRI S.V. MEHROTRA, ACCOUNTANT MEMBER
AND
SHRI K. N. CHARY, JUDICIAL MEMBER**

**ITA No.3826/Del/2014
Assessment Year : 2009-10**

Ashok Kumar Arora, Praveen Aggarwal & Co., Flat No.251, DDA Commercial Complex, Jhandewalan Extn., New Delhi. PAN : ADPPA 8870 N	Vs.	ITO, Ward- 20(3), New Delhi.
(Appellant)		(Respondent)

Appellant by : Shri K.V.S.R. Krishna, CA
Respondent by : Shri S. K. Jain, Sr.DR
Date of hearing : 28-03-2017
Date of pronouncement : 29-03-2017

ORDER

PER S.V. MEHROTRA, A.M :

This is an appeal filed by the assessee against the order dated 29.01.2013 passed by the Commissioner of Income Tax (Appeals)-XXII, New Delhi, u/s 144 of the Income Tax Act, 1961 (in short “the Act”), relating to assessment year 2009-10.

2. Brief facts of the case are that the assessee had filed return showing income of Rs.3,22,880/-. Since in-spite of various notices, the assessee did not attend, therefore, the assessment u/s 144 was completed determining the total income at Rs.40,21,450/-. Ld. CIT(A) has noted in para 4 that various notices

sent to assessee remained unserved and the notice sent on 14.01.2013 was received back unserved with the comments "Left without address" of the Postal Authorities on the envelope. He, therefore, dismissed the appeal of the assessee for non-prosecution applying the decision of ITAT, Delhi Bench in the case of CIT vs. Multiplan India Pvt. Ltd., 38 ITD 320 (Delhi). Being aggrieved, the assessee in appeal before the Tribunal and has, *inter-alia*, taken a ground that no reasonable opportunity had been provided to him.

3. At the time of hearing, ld. counsel for the assessee filed an affidavit of assessee, wherein, it is averred as under :-

"I, Ashok Kumar Arora S/o Late Sh. Kishan Chand R/o 1327, A/8 Govind Puri, Kalkaji, New Delhi-110019 do hereby solemnly affirm as under:-

- 1. That no notice was received by me from the assessing officer at address given in the assessment order G-2 Malka Ganj, New Delhi as I have changed my residence to 1327, A/8 Govind Puri, Kalkaji, New Delhi-110019.*
- 2. Also no notice was received by me from C.I.T(A) which is evident from the body of assessment order (although sent on correct address).*

The reason for non-service of notices from C.I.T(A) may be that I being a parking contractor at Railway Station my timing of being at home are very little/uncertain. I stay at home for a short period only."

4. Ld. DR pointed out that in ld. CIT(A)'s order the address of the assessee is given as under :-

Sh. Ashok Kumar Arora,
1327, A/8 Govindpuri,
Kalkaji, Delhi-110019

5. He submitted that at the aforesaid address only Id. CIT(A)'s order was served on assessee and, therefore, Id. CIT(A) rightly dismissed the appeal of assessee for non-prosecution.

6. We have considered the submissions of both the parties and have perused the record of the case. Admittedly, the assessment has been made by disallowing expenses to the tune of Rs.36,98,565/- which enhanced the assessee's income from Rs.3,22,880/- to Rs.40,21,450/-. This assessment was completed u/s 144 of the Act. Further, before Id. CIT(A) also no representation could be made by assessee on account of non-receipt of notice of hearing for which assessee has filed an affidavit. Under such circumstances, in order to impart substantial justice to assessee by providing him a reasonable opportunity of hearing, it would be in the interest of justice to set-aside the order of Id. CIT(A) and to restore the matter back to the file of the Assessing Officer for passing the assessment order *de-novo* after providing reasonable opportunity of hearing to assessee. The assessee is directed to cooperate with the Department in finalization of assessment.

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

Order pronounced in the open court on this 29th day of March, 2017.

Sd/-
(K. N. CHARY)
JUDICIAL MEMBER

Sd/-
(S.V. MEHROTRA)
ACCOUNTANT MEMBER

Dated: 29-03-2017.

Sujeet

Copy of order to: -

- 1) The Appellant
- 2) The Respondent
- 3) The CIT
- 4) The CIT(A)
- 5) The DR, I.T.A.T., New Delhi

By Order

//True Copy//

Assistant Registrar
ITAT, New Delhi