

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'SMC-1' NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER
[Through Video Conferencing]**

ITA No.14/Del/2020
Assessment Year: 2010-11

Smt. Mamta Goel, Ch. No. 206-297, Ansal Satyam, RDC, Raj Nagar, Ghaziabad	Vs.	ITO, Ward-1(4), Ghaziabad
PAN :AGNPG1969K		
(Appellant)		(Respondent)

Appellant by	Shri Akhilesh Kumar, Advocate
Respondent by	Shri R.K. Gupta, Sr.DR

Date of hearing	01.07.2021
Date of pronouncement	01.07.2021

ORDER

PER O.P. KANT, AM:

This appeal by the assessee is directed against order dated 10/10/2019 passed by the Learned Commissioner of Income Tax (Appeals), Ghaziabad [in short 'the Ld. CIT(A)'] for assessment year 2010-11 raising following grounds:

1. *Because, order of Ld. CIT(Appeals) is bad in law and against the facts and circumstances of the case.*
2. *Because Ld. CIT(Appeals) erred in dismissing the appeal ex-party without providing proper opportunity of being heard as assessee*

was prevented with sufficient cause in not appearing on the date of hearing.

3. *Because, ld. CIT(A) further erred in disposing appeal hurriedly and summarily dismissed all the grounds of appeal even without considering the merits of each ground with material on record which is against settled law.*

2. Briefly stated facts of the case are that in view of the information received of cash deposit of ₹ 12,38,000/- in saving bank account and investment made in purchase of immovable property amounting to ₹ 53,42,000/- during the year under consideration, the Assessing Officer reopened the assessment by way of issue notice under section 148 of the Income-tax Act, 1961 (in short 'the Act'). In response, the assessee filed return of income, however, no compliance was made of subsequent statutory notices issued under the Act and therefore the assessment was completed in terms of section 144 (best judgement assessment on the basis of available material) of the Act read with section 147 of the Act after making addition of ₹ 65,80,000/-. Aggrieved, the assessee filed appeal before the Ld. CIT(A), however, due to non-compliance before her also, the appeal of the assessee has been dismissed. Aggrieved, the assessee is before the Income-tax Appellate Tribunal (in short 'the Tribunal') raising the grounds as reproduced above.

3. Before us, the parties appeared through Video Conferencing facility. The assessee filed a paper-book containing affidavit of the Authorized Representative, who appeared before the Learned First Appellate Authority.

4. At the outset, the Learned Counsel of the assessee submitted that Learned CIT(A) has decided the appeal in ex-

parte, in hurried manner, without providing sufficient opportunity of being heard to the assessee. He submitted that on 18/09/2019, the Authorised Representative of the assessee could not appear before the Learned CIT(A) due to personal difficulty and he appeared before her after two days and requested to provide another opportunity. No subsequent notices were received by the assessee. However, the Ld. CIT(A) instead of providing opportunity of being heard to the assessee, decided the appeal *ex-parte*. The Learned Counsel of the assessee submitted that the assessee is willing to appear before the Learned CIT(A), and therefore matter may be restored back for deciding afresh after hearing the assessee and considering documentary evidence in support of the claim of the assessee.

5. The Learned DR, on the other hand, relied on the order of the lower authorities and submitted that in view of the non-compliance on the part of the assessee before the Assessing Officer as well as the Ld. CIT(A), the Ld. CIT(A) is justified in adjudicating the appeal.

6. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. We find that Ld. CIT(A) fixed the hearing for the first time on 11/06/2019 which was adjourned to 18/06/2019, and then further adjourned to 04/07/2019. The Learned CIT(A) has noted that on 04/07/2019 none attended. Compliance of another notice dated 16/09/2019 was also not made. Before us, the Learned Counsel has expressed personal difficulty of the Learned Authorised Representative of the assessee to appear before the Learned First Appellate Authority on 04.07.2019 and submitted that

subsequent notice dated 16/09/2019 was not received by the assessee.

7. In our opinion, in view of the reasonable cause for failure to attend the hearing by the Authorised Representative, the assessee should not be penalized. In the interest of substantial justice, we are of the opinion that the assessee should be heard by the Learned CIT(A) and therefore, we set aside the order of the Learned CIT(A) and restore the matter back to her for deciding afresh after hearing the arguments of the assessee and verifying documentary evidences. It is needless to mention that both the assessee as well as Assessing Officer shall be afforded adequate opportunity of being heard. The grounds of the appeal are allowed for statistical purposes.

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

Order pronounced in the open court.

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER

Dated: 1st July, 2021.

RK/-(DTPDC)

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi