

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

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
MS. KAVITHA RAJAGOPAL, JM

ITA Nos. 2632,2630,2629,2627,2656,2655/Mum/2023

(Assessment Year: 2009-10 to 2014-15)

Ami Deepak Shah,
A-103, Sanjay Building No.5
A.K. Road, Mittal Indl Estate,
Andheri East,
Mumbai-400 059

(Appellant)

National Faceless Appeal,
Delhi

Vs.

(Respondent)

PAN No. ABEPS4543D

Assessee by : Shri Rajiv Khandelwal &
Shri Neelkanth Khandelwal, ARs
Revenue by : Shri Manoj Kumar Sinha, DR

Date of hearing: 14.11.2023

Date of pronouncement : 20.11.2023

ORDER

PER BENCH:

01. These are the six appeals filed by the assessee from A.Y. 2009-10 to 2014-15, against the order of the Commissioner of Income-tax (Appeals) [the learned CIT (A)] passed on 29th May, 2023, for A.Y. 2009-10, 2010-11, 2011-12, 2012-13 and 2014-15 and on 20th May, 2023, for A.Y. 2013-14, wherein the appeals filed by the assessee against the assessment order passed under Section 143(3) read with section 147 of the Income-tax Act, 1961 (the Act) by the ITO ward 24(1)(1), Mumbai, the learned Assessing Officer on 23rd December, 2016, for A.Y. 2009-10, on 20th December, 2017, for A.Y. 2010-11 and on 21st December, 2017 for A.Y. 2011-12 and 2012-



13 and on 26th December, 2016 for A.Y. 2014-15 and on 28th March, 2016 for A.Y. 2013-14 respectively, were dismissed, holding that assessee did not respond to the various notices issued and therefore, for want of prosecution, were dismissed.

02. Thus, these appeals were dismissed holding that the notices issued by the learned CIT (A) were not responded and therefore, the orders of the learned Assessing Officer were upheld.
03. Assessee aggrieved for all these six assessment years against that appellate orders.
04. The fact for A.Y. 2009-10, which is the lead year shows that the assessee is an individual engaged in the business of manufacturing and trading of furniture items. She filed her return of income for A.Y. 2009-10 on 29th September, **2009, declaring total income of ₹3,14,780/-**, after claiming **deduction of ₹81,71,138/-** under Section 80IA of the Act. The return was processed under Section 143(1) of the Income-tax Act, 1961 (the Act).
05. Subsequently, information was received from DDIT, Investigation Wing, Unit 4(4), Mumbai, vide letter dated 4th March, 2016, wherein information received from Dy. Director of Central Excise, Mumbai shows that M/s Amardip Design being proprietary concern of the assessee started its Roorkie unit operations from A.Y. 2008-09 and claimed deduction from A.Y. 2008-09. However, the information forwarded shows that no production was done at Roorkie plant but production was done at Daman unit,

which is the unit of assessee's sister concern M/s Amardeep Sitting Systems. Thus, the assessee has claimed false deduction under Section 80IC of the Act.

06. Therefore, notice under Section 148 of the Act was issued on 29th March, 2016. On 4th November, 2016, assessee submitted that the return filed on 29th September, 2009, may be considered as return in response to notice under Section 148 of the Act. On 4th November, 2016, assessee was provided with the reasons recorded for reopening.
07. Subsequently, notice under Section 143(2) of the Act was also issued on 4th November, 2016. On 4th November, 2016, as per the order sheet entry, assessee did not have any objection against the reopening. The learned Assessing Officer recorded the information at paragraph no. 4 and 4.1 of the assessment order. As per paragraph no.4.2, assessee submitted that as she fulfills all the conditions for claim of deduction under Section 80IC of the Act, it should be allowed. The learned Assessing Officer noted that as per the information received from the Central Excise, on the basis of search, shows that the goods were never manufactured at Roorkie but at Daman. However, invoices were raised from Roorkie and sales were booked at Roorkie. He rejected the evidences submitted by the assessee in the form of electricity bills, employee details, bank account details, details of addition of fixed assets, provident fund returns, excise returns and sales tax returns. The learned Assessing Officer rejected all those evidences and denied the deduction of **₹79,40,225/-** and passed an assessment order under

Section 143(3) read with section 147 of the Act on 23rd December, 2016. The total income of the assessee was **determined at ₹82,55,000/-**.

08. The assessee preferred the appeal before the learned CIT (A). The learned CIT (A) issued notice to the assessee on 13th January, 2021, where the date of compliances on 18th January, 2021, and no response was received from the assessee. The learned CIT (A) further issued a notice on 29th July, 2022, fixing the date of compliances on 8th August, 2022, assessee also did not respond to this. On 1st November, 2022, the learned CIT (A) opened a communication window and this was also not responded. On 13th December, 2022, another notice was issued for compliance on 26th December, 2022, assessee did not respond to that. On 29th April, 2023, another notice was issued, where the compliance date was fixed on 15th may, 2023, which also failed to draw any response from the assessee.
09. Therefore, the learned CIT (A) was of the view that assessee has not pursued the appellate proceedings and failed to respond to the various notices. The learned CIT (A) then relied upon many judicial precedents and decided the appeal ex-parte for non prosecution.
010. He also held that in absence of several opportunities granted to the assessee, assessee failed to respond and therefore, the order of the learned Assessing Officer was upheld.

011. For A.Y. 2010-11 also, where on identical facts the **deduction of ₹56,63,860/-** was denied by the learned Assessing Officer, on appeal before the learned CIT (A), assessee did not respond on 13th January, 2021, 29th July, 2022, 1st November, 2022 and 28th April, 2023. Accordingly, it reached the same fate.
012. For A.Y. 2012-13, against the assessment order passed by the learned Assessing Officer, denying the deduction of **₹52,14,591/-**. In appeal before learned CIT (A) on all the above four occasions, the assessee did not respond and therefore, it reached the same fate.
013. For A.Y. 2012-13, the learned Assessing Officer denied the **deduction of ₹89,03,460/-** and on appeal before the learned CIT (A) on all the four occasions, no response was made and therefore, identical appellate order was passed.
014. For A.Y. 2014-15, the **deduction of ₹20,34,494/-** was denied and in appellate proceedings, assessee did not turn up on five different occasions and therefore, similar appellate order was passed.
015. For A.Y. 2013-14, the learned Assessing Officer denied the **deduction of ₹1,11,01,059/-**, and in appeal on five occasions, assessee did not respond and therefore, similar appellate order was passed.
016. Therefore, in all these appeals it is the non compliance of the assessee before the learned CIT (A), which has resulted into passing of the order ex-parte, on account of non-appearance.

017. The learned Authorized Representative subsequently, referred that in the present case, the notice might have been sent at the address of dilip@amardeepcharir.com but there is a change in the email id of the assessee at dilip.amardeep9@gmail.com and for this reason perhaps, the email sent to the assessee could not be replied therefore, there is a non compliance reported by the appellate authority. It was further stated that even otherwise, there is no reference in the appellate order that whether such emails are received by the assessee or not. It is also not available from the record that whether the notices were sent on ITBA or only on email. He further stated that assessee is a lady and therefore, it might have missed her attention even if the emails are sent to the old address. He referred to form no.35, wherein the address to which the notices were sent to the appellant is mentioned at serial no.17 of Form no.35 and categorically stated that assessee did not receive any such notices. He further referred to Rule 5(J) of Faceless Appeal Scheme, 2021 and stated that assessee should be served the notice. Therefore, the order passed by the learned CIT (A) is not sustainable.

018. The learned Departmental Representative vehemently submitted that when the assessee has been served the notices on five to six different occasions but on all occasions, assessee failed to respond the same. The learned CIT (A) after stating so many judicial precedents have decided the issue. As nothing is required to be stated

on the merits of the case, no fault can be found with the order of the learned CIT (A).

019. We have carefully considered the rival contentions and perused the orders of the lower authorities. We find that when appeal being preferred by the assessee before the learned CIT (A), assessee did not comply with the notices issued by the learned CIT (A). There is no denial of this fact. It is also not denied that notices have been issued to the email address mentioned by the assessee in the appeal memo. Before us, the claim of the assessee is that there is a change in the email address after filing of form no.35. This is not disputed by the Revenue. Even, according to Section 250(2) of the Act, the appellant have right to be heard at the hearing of the appeal. The learned CIT (A) has also not decided the appeal on the merits of the case and merely upheld the order of the learned Assessing Officer dismissing appeal on non prosecution.

020. Therefore, we are of the view that in the interest of justice, the assessee deserves one more opportunity. By this order, restoring all these appeals before the Id CIT (A) , we direct the assessee to furnish/ submits the paper books for all those six assessment years within 90 days from the date of receipt of this order before the learned CIT (A) and we also direct the learned CIT (A) that after considering the submission of the assessee and granting opportunity of hearing, if asked for, decide the issue afresh on the merits of the case, in accordance with the law.



021. Accordingly, all the six appeals filed by the assessee are allowed as indicated above for statistical purposes.

022. In the result, all the six appeals filed by the assessee are allowed as indicated above for statistical purposes.

Order pronounced in the open court on 20.11.2023.

Sd/-
(KAVITHA RAJAGOPAL)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 20.11.2023
Sudip Sarkar, Sr.PS



Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai