

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES, 'B', MUMBAI

**BEFORE HON'BLE PRESIDENT SHRI G.E.VEERABHADRAPPA
AND SHRI D.K.AGARWAL (JM)**

**ITA No.3098/Mum/2011
(Assessment Year:2006-07)**

Mrs.Nancy V.Silva, 701 Silver Niche 45, St.Francis Avenue, Santacruz (West), Mumbai-400054 PAN:AAPPS5830H	V/s	Deputy Commissioner of Income Tax 9(3), Mumbai.
APPELLANT		RESPONDENT

Date of Hearing : 15.2.2012 Date of Pronouncement : 24.2.2012
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Appellant by : Shri Vishwas V.Mehendale
Respondent by : Shri Arun Kumar

ORDER

PER D.K.AGARWAL (JM)

This appeal preferred by the assessee is directed against the order dated 12.3.2010 passed by the Id. CIT(A) for the assessment year 2006-07.

2. Briefly stated facts of the case are that the assessee is an individual carrying on business of civil constructions and commission on sale of flats and miscellaneous income. She filed return declaring a total income of Rs.2,02,357/-.

However, the assessment was completed at an income of Rs.13,00,780/- including the addition of Rs.10,75,000/- on account of unexplained cash credit and Rs.23,424/- on account disallowance of interest vide order dated 12.12.2008 passed u/s 143(3) of the Income Tax Act, 1961(the Act). On appeal, the Id. CIT(A), after sending notice through Speed Post/Ad to the appellant, which was received back to the office of the CIT(A) with postal remark "unclaimed" proceeded to decide the appeal ex-parte on the basis of material available on record. The Id.CIT(A) while confirming the additions made by the AO dismissed the appeal filed by the appellant.

3. Being aggrieved by the order of the Id. CIT(A), the assessee is in appeal before us taking following grounds of appeal :

- "1. On the facts and circumstances of the case and in law, Hon.CIT(A)-20, Mumbai erred in dismissing appellant's appeal.
2. On the facts and circumstances of the case and in law, appellant was prevented by reasonable cause in not attending the appellate proceedings before Hon. CIT(A)-20, Mumbai.
3. On the facts and circumstances, Hon. CIT(A)-20, Mumbai erred in deciding appellant's appeal on merits even in absence of any details on records."

4. At the time of hearing, the Id. Counsel for the assessee submits that some time in September 2009, the assessee's office was shifted to the new address at 701, Silver Niche 45, St.Francis Avenue, Santacruz (West), Mumbai-400054 and this change of address was duly informed to the Income Tax Department in the return of income filed for the assessment year 2009-10. It was, therefore, stated that the assessee was under the bonafide belief, and, therefore, in the interest of justice the assessee may be afforded another opportunity to argue the case before the Id. CIT(A) and in support an affidavit of the assessee was also filed.

5. On the other hand, the Id. DR while relying on the order of the AO and the Id.CIT(A) submits that he has no objection if the matter is set aside to the file of the Id. CIT(A) to decide the same afresh and according to law.

6. Having carefully heard the submissions of the rival parties and perusing the material available on record including the affidavit filed by the assessee to show that the assessee was under the bonafide belief that the change of address was informed /known to the Department; we are of the view that the assessee was prevented by reasonable cause, therefore, in the interests of justice, we consider it fair and reasonable that

the matter should go back to the file of the Id. CIT(A) and accordingly, we set aside the order passed by the Id. CIT(A) to his file to decide the appeal of the assessee afresh and according to law after providing reasonable opportunity of being heard to the assessee. The grounds taken by the assessee are, therefore, partly allowed for statistical purposes.

7. In the result, the assessee's appeal stands partly allowed for statistical purposes.

Order pronounced in the open court on 24th Feb.,2012.

Sd

(G.E.VEERABHADRAPPA)
PRESIDENT

sd

(D.K.AGARWAL)
JUDICIAL MEMBER

Mumbai, Dated 24th February,2012.

SRL:

Copy to:

1. Appellant
2. Respondent
3. CIT Concerned
4. CIT(A) concerned
5. DR concerned Bench
6. Guard file.

BY ORDER

True copy

ASSTT. REGISTRAR,
ITAT, MUMBAI

