

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

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

ITA No. 2324/Mum/2021

(Assessment Year 2019-20)

Estate of Late Harkishin
Bhojraj Chanrai
42A, Advent, Gen Jagannath
Bhosale Marg,
Churchgate,
Mumbai-400 021

Vs.

The DCIT
CPC,
Mumbai-400 020

(Appellant)

(Respondent)

PAN No. AABAE0681R

Assessee by : Ms Rajni Ram, AR
Revenue by : Shri Himanshu Sharma, DR

Date of hearing: 23.05.2022

Date of pronouncement : 29.06.2022

ORDER

PER PRASHANT MAHARISHI, AM:

01. This appeal is filed by assessee against the order passed by National Faceless Appeal Centre, Delhi [the learned CIT (A)] for A.Y. 2019-20 dated 18th October 2021.
02. Assessee has raised following grounds of appeal:-

"On the facts and circumstances of the case and in law

Ground No. 1: Exparte Order

1. The learned CIT(A) erred in passing an exparte Order, on the ground that there was no response on



the income tax website, to the notices of hearing and failed to take into consideration that the income tax website had been completely revamped and that the access to the website was not possible since the Username (PAN of Estate) and Password was treated as invalid.

Ground No. 2: Rate of Tax

1. The learned CIT(A) erred in confirming the action of the AO of treating the Assessee as an Association of Persons' instead of Individual, only on the ground that there were two executors of the Assessee and consequently erred in charging the maximum marginal rate of tax instead of normal tax slab rates that apply to senior citizen individual."

03. Briefly stated fact of the case shows that assessee is an Estate of Late Harkishin Bhojraj Chanraj where Shri Ishwar Thadani and Shri Mansukhram Mahtani are two executors. Return of income was filed on 16th July, 2019 at a total income of ₹12,85,261/- by stating Permanent Account Number of the assessee as an 'Association of Persons' i.e. AABAE0681R. As the estate is of the deceased persons, Assessee computed the tax liability of the assessee as per normal tax slab rates. Accordingly, on total income of ₹12,88,260/-, assessee computed the tax liability of ₹2,06,937/-.
04. The Central Processing Centre, Bangalore (the learned Assessing Officer) assessed the total income of the assessee at returned income, however, tax liability of the



assessee was computed at Maximum Marginal Rate at ₹4,01,937/- instead of ₹2,06,937/-.

05. Assessee aggrieved with that intimation preferred the appeal before the learned Commissioner of Income tax (Appeals). The learned CIT (A) considered the provisions of Section 168 of the Act and appellant was requested to show the documents by which executors of the estate were appointed. He granted three opportunities, assessee did not respond and therefore, he confirmed the taxation of income of assessee at maximum marginal rate. However, in the appellate order he mentioned at para no 5.3 that as per provision of section 168 (1) (b) assessment of income has to be made in the status of AOP and tax to be computed at slab rates.
06. Assessee is aggrieved with that and has preferred this appeal.
07. Learned advocate Miss Rajni Ram submitted that in the present case Mr. Ishwar Thadani and Mr Mansukh Ram mahtani are the executors of the estate of Late Mr. Harkishin Bhojraj Chanrai and the AOP was formed on 4th November, 2016. She submitted that as there are two executors under provisions of Section 168(1) (b) of the Act, the income has to be charged to tax as per normal slab rates applicable to an Individual assessee as per Para A of Part I of The First Schedule of The Finance Act 2019. . She further stated that learned Assessing Officer without any intimation or any response from the assessee has made the above adjustment of charging the tax at



maximum marginal rate. She also stated that Id CIT {A} agrees with the contention of assessee that tax has be charged on slab rate but did not grant relief. She stated that reply before CIT [A] could not be given as password of AOP was disabled.

08. The LD Departmental representative supported the order of the LD CIT [A].
09. We have carefully considered rival contentions and perused orders of lower authorities. Undisputed facts though the assessee has filed its return of income declaring an income of ₹ 1,288,261/- in the status of association of person of estate of a diseased individual. The tax liability is required to be computed as per the normal tax as applicable to an Association of person as per paragraph A of part I of the first schedule of the finance act, 2019. This fact has been agreed by the learned CIT – A also. However, the relief was not granted because assessee could not file reply for the reason that password and login ID of the assessee for disabled. Even otherwise, when the CIT appeal agrees with the contention that the tax should be charged at the normal slab rates, submission of the assessee should not have made any difference. We fully agree with the contention of the learned authorised representative that the income is required to be charged as per the normal slab rates as per the provisions of Section 168 (1) (b) of the act with respect to the first schedule of The Finance Act 2019. Accordingly, we direct the learned assessing officer to tax



the income of the assessee as per normal slab rates and not at maximum marginal rate. Accordingly, ground number 1 and 2 of the appeal of the assessee are allowed.

10. Appeal of the assessee is allowed.

Order pronounced in the open court on 29.06.2022.

Sd/-
(KAVITHA RAJAGOPAL)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 29.06.2022

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to :

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

BY ORDER,

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