

IN THE INCOME TAX APPELLATE TRIBUNAL  
“SMC” BENCH, MUMBAI  
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &  
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER

ITA No. 6820/Mum/2019

(A.Y: 2013-14)

Smt. Premlata V. Jain 3/95, MHB Colony, Swadeshi Mill Compound, Sion, Chunabhatti, Mumbai – 400022.	Vs.	ITO, Ward – 26(2)(4) C-11, Room – 707 7 <sup>th</sup> Floor, Pratyakshkar Bhavan, BKC, Bandra(E), Mumbai- 400051.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ADCPJ8829K		
Appellant	..	Respondent

Appellant by :	Ms. Rashmi Vyas.AR
Respondent by :	Mr. Pramod Nikalje.DR

Date of Hearing	15.06.2022
Date of Pronouncement	20.06.2022

आदेश / O R D E R

**PER PAVAN KUMAR GADALE JM:**

The assessee has filed the appeal against the order of the Commissioner of Income Tax (Appeals)-48, Mumbai passed u/s 143(3) and 250 of the Act.

At the time of hearing, the Ld.Counsel for the assessee submitted that there is a delay of 86 days in filing the appeal before the Hon’ble Tribunal and filed an affidavit for condonation of delay. We found the

facts mentioned in the affidavit are reasonable and the Ld. DR has no specific objections. Accordingly, we condone the delay and admit the appeal.

The assessee has raised the following grounds of appeal:

*1 NATURAL JUSTICE*

*1.1 The Learned Commissioner of Income - tax (Appeals) - 38, Mumbai [Ld CIT (A)] erred in not granting proper, sufficient and adequate opportunity of being heard to the Appellant while framing the appellate order.*

*1.2 It is submitted that, in the facts and the circumstances of the case, and in law, the appellate order so framed be held as bad and illegal, as:*

*(i) The same is framed in breach of the principles of natural justice; and*

*(ii) The same is passed without application of mind to the facts and the submissions brought on record by the Appellant.*

*WITHOUT PREJUDICE TO THE ABOVE*

*2.1 The Ld. CIT (A) erred in confirming the action of the A.O. in making addition, to the extent of Rs. 10,34,762/- out of Rs. 11,00,112/-, under the "Income from other sources"*

*2.2 While doing so, the Ld. CIT (A) erred in:*

*(i) Basing his action only on surmises, suspicion and conjecture;*

*(ii) Taking into account irrelevant and extraneous considerations;*

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(iii) Ignoring relevant material and considerations as submitted by the Appellant; and

(iv) Not admitting relevant documents as evidence as submitted by the Appellant before the A. O

2.3 It is submitted that in the facts and the circumstances of the case, and in law, no such addition / action was called for.

2.4 Without prejudice to the above, assuming - but not admitting - that some addition was called for, it is submitted that the computation of the addition made by the A.O. is arbitrary, excessive and not in accordance with the law

WITHOUT FURTHER PREJUDICE TO THE ABOVE

3.1 The Ld. CIT (A) erred in confirming the action of the A.O. in making addition of Rs. 2,41,000/- u/s. 68 of the Act to the income of the Appellant, being the amount of cash deposits in saving bank account

3.2 It is submitted that in the facts and the circumstances of the case, and in law, no such addition was called for.

3.3 Without prejudice to the above, assuming - but not admitting - that some addition was called for, it is submitted that the computation of the addition made by the A.O. is arbitrary, excessive and not in accordance with the law

LIBERTY

4 The Appellant craves leave to add, alter, delete or modify all or any the above

2. The brief facts of the case are that the assessee is a proprietor and is engaged in the business of manufacturing of plastic bags and has income from business, house property and other sources. The

assessee has filed the return of income electronically on 18.12.2013 for the A.Y 2013-14 disclosing a total income of Rs. 3,54,270/- and the return of income was processed u/s 143(1) of the Act. Subsequently, the case was selected for scrutiny and notice u/s 143(2) and 142(1) of the Act along with questionnaire was issued. In compliance, the Ld. AR of the assessee appeared from time to time and filed the details and the case was discussed. The Assessing Officer (A.O) (i) on perusal of the information found that the assessee has purchased a flat contributing 50% share being Rs.67,32,000/- along with Shri Vimal S Jain. The assessee has sold old gold purchased in the year 1976 and worked out long term capital gains of Rs.11,00,112/- which was invested in the residential flat and claimed exemption under Sec. 54 of the Act. The assessee has filed the details referred at Para 4 of the assessment order. Since no evidence was filed supporting the purchase of gold, the AO has denied the index cost of acquisition and treated as income from other sources. (ii) Further, the AO found that there was cash deposits of Rs. 2,41,000/- in the savings bank account maintained by the assessee.

Since, the assessee has failed to submit the details of deposits, the AO has treated as unexplained cash deposits u/s 68 of the Act. (iii) The assessee has obtained the housing loan from ICICI Bank along with other two persons and the assessee has claimed 50% of principal & interest component deduction U/sec80C and Sec24 of the Act. Since the loan was obtained by three persons, the A.O. has restricted the claim to the extent of 1/3 of the amount and assessed the total income of Rs. 17,27,980/- and passed the order u/s 143(3) r.w.s 147 of the Act dated 23.03.2016.

3. Aggrieved by the order the assessee has filed an appeal before the CIT(A). The CIT(A) considered the grounds of appeal, submissions of the assessee and findings of the A.O. but has confirmed the addition of sale of old gold ornaments and the deposits made in the bank account and has granted relief in other grounds of appeal and partly allowed the appeal. Aggrieved by the CIT(A) order, the assessee has filed an appeal before the Hon'ble Tribunal.

4. At the time of hearing, the Ld. AR submitted that the CIT(A) has erred in confirming the additions on the disputed issues overlooking the factual aspects. The assessee has good case on merits and has the evidences to substantiate the case and emphasizes that the evidences play a vital role in the decision making and prayed for an opportunity to substantiate with the material evidences before the lower authorities. Contra, the Ld. DR supported the order of the CIT(A).

5. We heard the rival submissions and perused the material on record. The disputed issues envisaged by the Ld.AR that the CIT(A) erred in confirming the additions made by the A.O because the requisite material information was not filed. Further the Ld.AR emphasized that the assessee is now ready to substantiate the claim with the evidences and prayed for an opportunity of hearing. We are of the view that there could be various reasons for non submission of details which cannot be overruled. We considering the principles of natural justice shall provide one more opportunity of hearing to the assessee to substantiate the case along with evidences. Accordingly, we restore the entire disputed

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issues to the file of the Assessing officer to adjudicate afresh on merits. The assessee should be provided adequate opportunity of hearing and shall cooperate in submitting the information and allow the grounds of appeal of the assessee for statistical purposes.

6. In the result, the appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court on 20.06.2022.

Sd/-  
(GAGAN GOYAL)  
**ACCOUNTANT MEMBER**

Sd/-  
(PAVAN KUMAR GADALE)  
**JUDICIAL MEMBER**

Mumbai, Dated 20.06.2022

KRK, PS

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, Mumbai / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार / BY ORDER,

सत्यापित प्रति //True Copy//

1.

( Asst. Registrar)  
ITAT, Mumbai