

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G" MUMBAI**

**BEFORE SHRI ABY T VARKEY (JUDICIAL MEMBER)
AND
SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)**

**ITA No. 2316/MUM/2022
Assessment Year: 2013-14**

Mrs. Simi Surendra Arya,
D-402, Mota Nagar, A.K., Road
Bhawan Chakala Andheri (E),
Mumbai-400069.

PAN No. ADYPA 1172 G

Appellant

ITO Ward 25(1)(2),
Room No. 403/406, C-10,
Vs. Pratyaksh Kar Bhavan Bandra
Kurla Complex, Bandra (E).

Respondent

Assessee by : Mr. R.S. Sharma, AR
Revenue by : Mr. Abi Rama Karthikeyan S., DR

Date of Hearing : 26/12/2022
Date of pronouncement : 29/12/2022

ORDER

PER OM PRAKASH KANT, AM

This appeal has been preferred by the assessee against the order dated 12.07.2022 passed by the Ld. Commissioner of Income-tax (Appeals)-National Faceless Appeal Centre (NFAC), Delhi [in short 'the Ld. CIT(A)'] for assessment year 2013-14, raising following grounds :

- 1. Requesting Hon'ble the Income Tax Appellate Tribunal Mumbai bench to afford an opportunity to the assessee to*



present the case of the assessee before Commissioner of Income Tax Appeal which she could not do on account of she being suffering from Critical Illness (Paralysis). Due to poor health condition. the assessee was not in a state to Check her E-mails, as a result of which notice u/s 250 fixing date of hearing sent to registered email id of assessee went unnoticed. Further, the postal communication was also not send by the Income tax department or NFAC, hence the matter of CIT (A) was completely left unattended on part of the assessee as she being ignorant on account of her ill health. Since the CIT (A) has wrongly and illegally confirmed addition u/s 68 of Rs 36,00,000 being made By assessing officer ignoring the facts and circumstances of case, The Hon'ble ITAT Mumbai bench is requested to allow assessee a reasonable opportunity of being heard by either pursuing the appeal filed by her before CIT(A) or the case be referred back to the assessing officer for fresh consideration.

- 2. On the facts and in the circumstances of the case and in law the learned assessing officer and CIT Appeal erred in not accepting the fact that above said amount of Rs 36 lacs was directly paid by her husband on her behalf and shown as Sundry Creditors in the books and confirmation was submitted before Assessing Officer to this effect.*
- 3. On the facts and in the circumstances of the case and in law the learned assessing officer and CIT Appeal Both have erred in not accepting the fact that property, which was purchased by her was in joint name where she was co-owner to the extent 32.55 percent along with her husband*



having balance share of 67.45 percent accordingly payment of entire consideration was justified.

4. *On the facts and in the circumstances of the case and in law the impugned order is bad both on facts and law.*
5. *On the facts and in the circumstances of the case and in law the Ld. Appellate Authority has wrongly and illegally confirmed the order of assessment passed by the Assessing Officer.*

2. At the outset, the Ld. Counsel of the assessee submitted that the appeal has been passed ex-parte qua the assessee without taking into consideration the submission/arguments on behalf of the assessee. The Ld. Counsel of the assessee also filed a prayer for admission of the following additional evidence on the issue-in-dispute raised in the ground of appeal :

- *Details of property and respective share of co-owners*
- *Payment Details towards cost of property*
- *ITRV of Surendra Kumar Arya Prop, M/s Sushant Exports*
- *Computation of Income of Surendra Kumar Arya Prop, M/s Sushant Exports*
- *Balance Sheet and Profit and Loss Statement (F.Y 12-13)*
- *Explanation for credits in bank A/C of Surendra Kumar Arya Prop, M/s Sushant Exports*
- *Bank Statement of Surendra Kumar Arya Prop, M/s Sushant Exports*
- *PAN and confirmation Letter*
- *Sale Deed*



3. The Ld. Departmental Representative (DR) did not seriously object for admission of the additional evidence being important for adjudication of issue-in-dispute.

4. We have heard rival submission of the parties on the issue-in-dispute and perused the relevant material on record. The finding of the Ld. CIT(A) on the issue-in-dispute is reproduced as under:

“6.3.3. However, during the course of these appellate proceedings, in support of Ground of appeal, the assessee has not filed any written submissions or any documentary evidence or even any reply, in spite of issuing several notices u/s 250 for hearing to the assessee. Perusal of email delivery report obtained from FACELESS ITBA APPEAL MODULE clearly shows that all the notices u/s 250 for hearing, which were sent to the assessee, were duly served on the appellant. The assessee has made absolutely no compliance to any of the notices. Neither any written submissions have been filed, nor any documentary evidence have been submitted in support of the Ground of appeal.

6.3.4. Under the above circumstances, the assessee's contention raised in the Grounds of appeal that the ledger of Sushant exports and the source of payments of the assessee for the property had been duly submitted to the Ld AO, remains completely unacceptable. The AO has categorically recorded in the assessment order that during assessment proceedings, the assessee was asked by AO to furnish the IT-V, Computation, Bank Statement of the loan party. In



response, the assessee submitted before AO that the loan of Rs.36,00,000/- was shown by the assessee in the sundry creditors and has been credited in the ledger account of M/s Sushant Exports, the proprietorship firm of her husband. However, the assessee failed to furnished the copies of bank statements reflecting the payments of Rs.36.00,000/- made for purchase of the property. Besides, confirmation of her husband had also not been filed by the assessee before AQ. Not only these documents were not filed before AO, but even during these appellate proceedings, such documents are not submittrd. Under these circumstances, AO has recorded his categorical concluding findings that in the absence of relevant documentary evidences, merely reflecting a credit entry in the liability side of the Balance Sheet does not established the source of funds.

6.3.5. Consequently, the AO's observation are found to be absolutely in order that it was the primary onus of the assessee to prove the source of funds received to the satisfaction to the AO, however, the said onus had not been discharged by the assessee. Consequently, the AO's action of making addition of Rs.36,00,000/-, to the total Income of the assessee, as unexplained cash credit u/s 68 of the I.T.Act, 1961, is upheld.”

4.1 It is evident from the above finding of the Ld. CIT(A) that issue-in-dispute not had been decided on merit, after taking into consideration, submission of the assessee. The Ld. Counsel submitted, the assessee being new to procedure of issuing notice on



ITBP portal and therefore, could not file response to the notice issued by the Ld. CIT(A). The Ld. Counsel of the assessee has filed additional evidence which are having impact on the adjudication of the issue-in-dispute and therefore, we admit the same. Since, the issue-in-dispute has not been decided by the Ld. CIT(A) on merit and therefore, we feel appropriate to restore this issue back to the file of the Ld. CIT(A) for deciding afresh after considering the additional evidence along with other document which would be filed on behalf of the assessee. The Ld. Counsel appearing on behalf of the assessee has given undertaking that due co-operation shall be extended by the assessee in disposal of the matter before the Ld. AO. Accordingly, the grounds raised by the assessee are allowed for statistical purposes.

5. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open Court/under Rule 34(4) of the ITAT Rules, 1963 on 29/12/2022.

Sd/-
(ABY T VARKEY)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai;
Dated: 29/12/2022
Rahul Sharma, Sr. P.S.

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.

//True Copy//

BY ORDER,
(Sr. Private Secretary)
ITAT, Mumbai