

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

**BEFORE SHRI KULDIP SINGH (JUDICIAL MEMBER)  
AND  
SHRI S RIFAUR RAHMAN (ACCOUNTANT MEMBER)**

ITA No.2608/Mum/2022  
(Assessment Year 2017-18)

Aparna Jagdish Wagh 101, RX 37, Palm View CHS, Near Sonata Complex, MIDC Dombivli (E), Dist. Thane <b>PAN : AASPW5846C</b>	vs	ACIT, Circle-3, Kalyan 2 <sup>nd</sup> floor, Rani Mansion Murbad Road, Kalyan (W), Dist. Thane, Maharashtra 421 301
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee represented by	Shri Subodh Ratnaparkhi
Department represented by	Shri Manoj Kumar Sinha, (Sr. AR)

Date of hearing	09/01/2023
Date of pronouncement	23/02/2023

**ORDER**

**PER: KULDIP SINGH (JM):**

The Appellant, Aparna Jagdish Wagh (hereinafter referred to as the 'assessee') by filing the present appeal, sought to set aside the impugned order dated 12/09/2022 passed by the National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as the 'CIT(A)'] qua the assessment order for Assessment Years 2017-18 on the ground inter alia that:-

***“On the facts and in law,***

1. *The Hon. CIT(A), National Faceless Appeal Centre (NFAC), Delhi erred in deciding the appeal ex parte, ignoring the adjournment requests of the appellant to the notices issued, thereby denying the appellant any opportunity to furnish her say and accordingly breaching the salient principles of equity, fairplay and natural justice for which reason the appeal order be quashed/set aside.*

2. *The Hon. CIT(A). National Faceless Appeal Centre (NFAC), Delhi erred in upholding the additions of Rs. 1,10,00,000/- + Rs.2,50,000/- = Rs. 1,12,50,000/-*

*as long term capital gain arising on sale of residential flats, which additions are factually incorrect as the appellant was not the beneficial owner of 2 flats sold for Rs. 1,10.00.0007-, her name being included in the purchase and sale agreements of the said flats by her husband who was the real owner as a matter of security only and that the transaction of Rs. 2,50,0007- was not for sale of any flat but instead for purchase of a plot of land by the appellant alongwith her sisters and accordingly the said additions were not justified and bear to be deleted.*

3. *Without prejudice, the Hon. CIT(A) erred in upholding the addition of Rs. 1,10,00,0007- as long term capital gains arising on sale of 2 flats, thereby-bringing to tax the entire sale consideration of 2 flats, without granting appropriate deduction for indexed cost of acquisition as per the provisions of section 48 of the IT Act. 1961 and for this reason the additions not justified and appropriate deduction for indexed cost of acquisition is required to be granted.*

4. *The Hon. CIT(A) erred in making addition of Rs. 38,12,0007-. as unexplained money u/s 69A r.w.s 115BBE of the I.T Act. 1961. on account of alleged cash deposits in bank account, ignoring the fact that the cash deposit of Rs. 38.00.0007-was actually made by the husband of the appellant from his own sources and imbalance deposit of Rs. 12,000/-, the source was fully explainable and accordingly impugned addition was not justified in the hands of the appellant and bears to be deleted.*

5. *The appellant craves leave to add, alter, amend and/or vary any of the above grounds of appeal at any time before the decision of the appeal.”*

2. Briefly stated, facts necessary for consideration and adjudication of the issues at hand are : The assessee derives income from salaries, remuneration from partnership firm and also income from other sources. The assessee’s return of income filed for the year under consideration declaring total income at Rs.31,99,720/- was subjected to scrutiny. Notice

under section 143(2) and 142(1) were issued to which the assessee has duly responded by filing requisite details. Thereafter, two more notices were issued by the Assessing Officer under section 142(1) seeking further details / documents / evidences in support of the return filed, but assessee has failed to file such further details. Consequently, Assessing Officer proceeded to make addition of Rs.38,12,000/- under section 69 read with section 115BBE of the Act for depositing unexplained cash in the bank during demonetization. The Assessing Officer further made addition of Rs.1,12,50,000/- on account of long term capital gain of the assessee and thereby framed the assessment under section 144 read with section 147 of the Act.

3. Assessee carried the matter before the Ld.CIT(A) by way of filing appeal who has partly allowed the same. Feeling aggrieved with the impugned order passed by the Ld.CIT(A), assessee has come up before the Tribunal by way of filing the present appeal.

4. We have heard the Ld.AR for the assessee and the Ld.DR of the Revenue, gone through the documents available on record, order passed by the lower Revenue Authorities in the light of facts and circumstances of the case and the case law applicable thereto.

5. At the very outset, it is brought to the notice of the Bench by the Ld.ARs of the parties to the appeal that assessee has failed to file her explanation / evidence before the Assessing Officer as well as Ld.CIT(A) and as such assessment order as well as order passed by the first appellate authority are exparte on the basis of best judgement assessment. Perusal of

the impugned order passed by Ld.CIT(A) particularly para 2 shows that 4 notices were alleged to have been given to the assessee, but no submissions have been made by her nor anyone put in appearance to bring on record the evidence, if any, with the assessee. The Ld.AR for the assessee contended that none of the notices has been served upon the assessee rather, she has not been provided with any opportunity by the Assessing Officer as well as Ld.CIT(A).

6. No doubt, presumption of truth is attached to the impugned orders passed by Assessing Officer as well as Ld.CIT(A) that notices were given to the assessee but she has not opted to put in appearance, but in the interest of justice and to decide the issue once for all and to curtail the multiplicity of the proceedings one more opportunity is required to be given to the assessee. Since assessment order has been passed on the basis of best judgement assessment under section 144, it would be appropriate to remand this case back to the Assessing Officer to decide afresh after providing opportunity of being heard to the assessee. Assessee has also assured that she will regularly put in appearance before the Assessing Officer to support her case.

7. Resultantly, appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court on 23/02/2023.

Sd/-

sd/-

<b>(S RIFAUH RAHMAN)</b>	<b>(KULDIP SINGH)</b>
<b>ACCOUNTANT MEMBER</b>	<b>JUDICIAL MEMBER</b>

Mumbai, Dt : 23<sup>rd</sup> February, 2023

Pavanan

Copy to :

1. The appellant
2. The respondent
3. The CIT concerned
4. The CIT(A)
5. DR, SMC Bench
6. Guard File  
(True Copy)

By order

Dy.Registrar / Asst.Registrar  
ITAT, Mumbai Benches