

IN THE INCOME TAX APPELLATE TRIBUNAL
“DB” BENCH, JABALPUR
BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 116/Jab/2023
(A.Y: 2011-12)

Rubeena Shahin Khan 655, Chotu Miyan Ki Talaiya, Khatek Mohlla, Lokman Tilak Ward, Jabalpur-482001, MadhyaPradesh.	Vs.	ITO, Ward1(3), Annexure Bldg, Aayakar Bhawan, Napier Town, Near Russel Chock, Jabalpur-482001, MadhyaPradesh.
PAN/GIR No. : AWSPK5404A		
Appellant	..	Respondent

Appellant by :	Shri.Poonam Chand Jain.Adv.AR
Respondentby :	Shri.Shiv Kumar.Sr.DR

Date of Hearing	22.09.2023
Date of Pronouncement	09.10.2023

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

The assessee has filed the appeal against the order of the National Faceless Appeal Centre (NFAC) /CIT (A) passed u/sec144 r.w.s 147 and u/sec 250 of the Act. The assessee has raised the following grounds of appeal:

1 That, the Commissioner of Income Tax (Appeals) NFAC is totally unjustified in dismissing the appeal without providing proper opportunity of being heard to the appellant.

2 That, the Appellant has already filed the detailed explanation to appeal on 26/06/2023, which was not considered by the CIT (Appeal) NFAC.

3. That, the Appellant has filed the explanation to the appeal on 26/06/2023 and the due date for submission of reply was 03/07/2023, the reply was filed by acknowledgment no. 298980781260623, which was not considered while passing the order dated 10/07/2023.

4 That, the Ld. CIT (appeals) NFAC is totally unjustified in dismissing the appeal on the ground that there is no response from the Appellant side where as written submission to the appeal was already on record.

5. That the re-opening of assessment u/s 147/148 is totally illegal, improper and unjustified The order so passed by the Ld A.O. should have been quashed.

6. That assessment made on assessee under section 147 was bad in law as the same is based on the AIR/CIB information, without sufficient material on record for initiating the reopening proceedings.

7. That the reopening of assessment has been done without proper application of mind on the facts and circumstances of the case and passing the order u/s 144/147 in arbitrary manner is totally illegal, improper and unjustified the same should be quashed.

8. That, the whole assessment proceeding is bad in law the same is illegal, improper and unjustified the same should be quashed.

9. That, on fact and circumstances of the case that no notice u/s 148 and 142 (1) have been received by the assessee while there is instruction of Board for manual hearing in the cases of re-assessment proceedings, hence the order so passed u/s 144 is totally illegal, improper and unjustified the same should be quashed.

10. That, the Ld. A.O. has erred in law as well as on facts in passing ex- party assessment order u/s 144 without proper services of notices to the assessee u/s 148 and 142(1), hence the whole assessment is bad in law, should be quashed.

11. That, on the facts and circumstances of the case the Ld. A.O. was not justified in making the addition of Rs. 45,50,560.00 u/s 69 the addition is totally based on suspicious, surmises and presumption should be deleted.

12. That, the Ld. A.O. has erred in law as well as on facts by making the addition of Rs. 45,50,560.00 in the hand of the assessee u/s 69 while the property was purchased jointly with other three (3) co-owners but the whole amount is added in the hands of assessee is totally illegal and unjustified should be deleted.

13. That, the Ld. A.O. has erred in law as a well as on facts by making the addition of Rs. 45,50,560.00 in the hand of the assessee u/s 69 while the other co-owners are having their separate PAN and they are separately assessed to Income Tax instead that whole amount of investment, added in the hands of the assessee. which is totally illegal, improper and unjustified the addition should be deleted.

14. That, on the facts and circumstance of the case the Ld. A.O. was not justified in charging the interest u/s 234A the same should be deleted.

15. That, on the facts and circumstance of the case the Ld. A.O. was not justified in charging the interest u/s 234B and 234C while the liability payment of advance tax not attracted in the instant case as per the provision of section 208. The amount of interest so charged should be deleted.

16. That, the assessee reserve his right for raising any additional grounds or grounds of appeal at the time of hearing or before the hearing.

2. The Brief facts of the case are that, the assessee is an individual. The Assessing Officer (AO) as per information available on AIR/CIB received through ITBP, found that the assessee has purchased immovable property of Rs. 45,50,560/- in F.Y 2010-11 and the assessee has not filed the return of income. Therefore the AO has reason to believe that the income has escaped assessment and issued notice u/s 148 of the Act. Subsequently the notice u/sec 143(2) and 142(1) of the Act are issued through ITBA E filing portal and there was no response. The AO found that the assessee has made investment for purchase of property and sources are to be explained. Since there was no compliance by the assessee, the AO has issued notice u/s 133(6) of the Act on the Sub Registrar, Jabalpur to file the copy of the registered purchase deed and the copy of deed was filed on 02.07.2018. Whereas, the assessee has

purchased the property along with three other co-owners for a consideration of Rs.42 lakhs and stamp registration paid of Rs.3,50,560/- and all aggregating to Rs.45,50,560/- Further, the A.O has issued notice U/sec133(6) of the Act on the branch manager Canara Bank to submit the bank account statement. Since the sources of investment in the property could not be explained by the assessee, finally the AO has assessed the total income of Rs.45,50,560/- and passed the order u/s 144 r.w.s 147 of the Act dated 26.11.2018.

3. Aggrieved by the order, the assessee has filed an appeal before the CIT(A), whereas the CIT(A) has considered the grounds of appeal, statement of facts and findings of the AO and has issued notices of hearing and since there was no compliance/submissions by the assessee to notices. Therefore the CIT(A) considering the information on record has confirmed the action of the A.O and dismissed the appeal. Aggrieved by the order of the CIT(A), 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 action of the Assessing officer overlooking the submissions made in the appellate

proceedings. Further the assessee has a good case on merits and shall substantiate with the material evidences and prayed for an opportunity to explain before the lower authorities. Per Contra, the Ld. DR supported the order of the CIT(A).

5. We heard the rival submissions and perused the material on record. Prima-facie the CIT(A) has passed the order considering the fact that there is no appearance/submissions in spite of providing adequate opportunity of hearing and the notices were issued. Therefore, the CIT(A) was of the opinion that the assessee is not interested in prosecuting the appeal and dismissed the appeal ex-parte confirming the action of the assessing officer. The Ld.CIT(A) has issued the notices of hearing on various dates referred at Para 4 of the order, but there was no response and thus the Ld.CIT(A) came to a conclusion that the assessee is not interested and decided the appeal based on the information available on record. When a query was raised to Ld.AR for the reasons for non appearance before the CIT(A), the Ld.AR submitted that the assessee has filed the explanations much before the date of compliance in the Appellate proceedings and were not considered. Whereas the assessee has raised grounds of

appeal challenging the additions of the A.O and there could be various reasons for non appearance which cannot be overruled. Therefore, considering the principles of natural justice shall provide with one more opportunity of hearing to the assessee to substantiate the case with evidences and information. Accordingly, we set aside the order of the CIT(A) and remit the entire disputed issues to the file of the CIT(A) to adjudicate afresh and the assessee should be provided adequate opportunity of hearing and shall cooperate in submitting the information for early disposal of the appeal. Accordingly, 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 purposes.

Order pronounced under Rule 34(4) of the Income Tax Appellate Tribunal Rules, 1963

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 09.10.2023

KRK, PS
Copy of the Order forwarded to :

ITA No. 116/Jab/2023
Rubeena Shahin Khan, Jabalpur.

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1. The Appellant
2. The Respondent
3. The CIT (Judicial)
4. The PCIT
5. DR, ITAT, Jabalpur
6. Guard File

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

(Asst. Registrar)
ITAT, Jabalpur