

IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD "D" BENCH

**Before: Shri Waseem Ahmed, Accountant Member  
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 743/Ahd/2023  
Assessment Year 2016-17**

Prafullaben Mohanlal Raval, 2, Darshan Society, Behind Jain Derasar, Sihor, Gujarat-364240  PAN: CAJPR0711C (Appellant)	Vs	The ITO, Ward-1(8), Bhavnagar  (Respondent)
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**Assessee Represented: Shri Suchek Anchaliya, A.R.  
Revenue Represented: Ms. Neeju Gupta, Sr.D.R.**

Date of hearing : 13-02-2024  
Date of pronouncement : 21-02-2024

**आदेश/ORDER**

**PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-**

This appeal is filed by the assessee as against the exparte appellate order dated 16-08-2023 passed by Commissioner of Income Tax [Appeals], National Faceless Appeal Centre [NFAC], Delhi arising out of the exparte assessment order passed under section 144 r.w.s. 147 of the Income Tax Act, 1961 [herein after referred as the Act] relating to the assessment year 2016-17.

2. The brief facts of the case is that the assessee is an individual who has not filed her Return of Income for the Assessment Year 2016-17. During the Financial Year 2015-16, the assessee purchased an immovable property for a sale consideration of Rs.2,25,00,000/- on 23.09.2015 and TDS of Rs.2,25,000/- deducted thereon. Since the source of investment in the immovable property remains unexplained by the assessee by not filing regular Return of Income, the case was reopened by issuing a notice u/s. 148 of the Act on 28.03.2021, to assessee's Bhavnagar address at Gujarat. The assessee has not replied to the reopening notice as well as other notices issued u/s. 142(1) of the Act on 04.08.2021, 17.08.2021, 08.02.2022 and to the final Show Cause Notice dated 01.03.2022. In the absence of any details, an exparte assessment order was passed making an addition of Rs.2,25,00,000/- as the unexplained income of the assessee. The assessee filed an appeal before Ld. NFAC, the Ld. CIT(A) gave five hearing opportunities to the assessee. The assessee requested 10 days time as against the hearing fixed on 28.06.2023. Therefore the appeal was adjourned to 20.07.2023 making as final opportunity. However the assessee failed to furnish any details before Ld. NFAC thereby Ld. NFAC passed an exparte appellate order confirming the addition made by the Assessing Officer.

3. Aggrieved against the same, the assessee is in appeal before us raising the following Ground of Appeal:

*1. On the facts and in the circumstances of the case and in law the Hon'ble NFAC erred in confirming the order of the Learned Assessing Officer (Ld. A.O.), without providing a reasonable opportunity of being heard.*

2. *On the facts and circumstances of the case and in law, the Hon'ble NFAC erred in confirming the action of the Ld. A.O. of the addition of Rs.2,25,00,000/-, being purchase consideration of Immovable property, without appreciating the facts that the assumption of jurisdiction by the Ld. A.O. for initiating reassessment proceedings u/s 148 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') is bad in law.*

3. *On the facts and circumstances of the case and in law, the Hon'ble NFAC erred in confirming the addition of Rs.2,25,00,000/- being purchase consideration of Immovable property by treating it as unexplained income from undisclosed sources, on the basis of non-filing of return without appreciating the fact of the case.*

3.1 *On the facts and circumstances of the case and in law, the Hon'ble NFAC erred in not appreciating the fact that appellant's income was below taxable limit, hence the assessee was not liable to file the Return of Income u/s 139 of the Act.*

4. *On the facts and circumstances of the case and in law, the Hon'ble NFAC has erred in confirming the action of the Ld. A.O. by making addition to the tune of Rs.2,25,00,000/- as unexplained income without appreciating the fact that the source of money paid for purchase of immovable property is from the known sources and banking channel.*

5. *On the facts and circumstances of the case and in law, the Hon'ble NFAC has erred in confirming the action of the Ld. AO of making the addition without any head of income by treating Rs.2,25,00,000/- as unexplained receipts without appreciating the facts that the said transaction is for purchase of property and receipt of money.*

6. *The appellant craves to add, alter, classify, reclassify, delete or modify any of the above grounds of appeal and requests to consider each of the above grounds without prejudice to one another.*

3.1. The assessee also filed application under Rule 29 of the Income Tax Appellate Rules, 1963 enclosing Return of Income filed by the assessee in response to 148 notice, Agreement of purchase of the immovable property, Ledger accounts, Bank Statements, source of fund of Mr. Mohan Raval and Rajesh Raval.

4. Ld. Counsel Shri Suchek Anchaliya appearing for the assessee submitted that the assessee after her marriage shifted to Mumbai from Bhavnagar, Gujarat. Though only one notice was served upon

the assessee, she could not participate both before the Assessing Officer. During the hearings before the Appellate proceedings, she was collecting all the required details and therefore sought for an adjournment for filing the above details. However Ld. NFAC decided the matter exparte, without granting adjournment sought by the assessee. Therefore the assessee is invoking Rule 29 of the Income Tax Appellate Rules and requested to entertain the additional documents submitted by the assessee and further prayed that the matter may be set aside to the file of Ld. CIT(A), NFAC for fresh adjudication.

5. Per contra, Ld. Sr. D.R. Ms. Neeju Gupta appearing for the Revenue strongly objected to the plea of the assessee, stating that proper opportunities were given by the Assessing Officer before framing assessment order and also issued final show cause notice before passing the exparte assessment order. Even before Appellate Authorities, five opportunities were given to the assessee, however the assessee failed to avail the hearing opportunities. Therefore for the willful non-cooperation of the assessee, the present application under Rule 29 is liable to be rejected and the assessee appeal is to be dismissed.

6. We have given our thoughtful consideration and perused the materials available on record. It is seen from the assessment order and Return of Income filed by the assessee, the assessee is consistently showing the Bhavnagar, Gujarat address as the communication address of the assessee. So, there is no fault on the part of the department in serving all the notices in the "Last Known"

address of the assessee. However the assessee claims that only one notice was received by the assessee at Bhavnagar address and could not participate in the assessment proceedings. Now the assessee undertakes to file all the required details as submitted in Rule 29 Application before the Authorities concerned, thereby requested to give one more opportunity to represent the case of the assessee.

6.1. It is seen that Rule 29 of the ITAT Rules prescribes production of additional evidence before the Tribunal is acceptable, provided if the Income Tax Authorities have decided the case without giving sufficient opportunity to the assessee to adduce evidence either on points specified by them or not specified by them. Here, in this case in spite of five opportunities given by the Assessing Officer as well as Ld. CIT(A), the assessee failed to file the required details before the Assessing Officer which resulted in passing exparte orders. However the A.O. treated the entire investment in the immovable property as the unexplained income of the assessee and taxed thereon, which is not permissible in law. Therefore to meet the ends of justice, we deem it fit to set aside the matter back to the file of Jurisdictional Assessing Officer (JAO) to do de-novo assessment by imposing a cost of Rs.5,000/- payable to the Prime Minister National Relief Fund for not availing the hearing opportunities given by the Lower Authorities. On production of payment of receipt of the above cost by the assessee, the JAO to proceed with the de-novo assessment. Needless to state, that the assessee should cooperate by producing all the required details before the Jurisdictional Assessing Officer for completion of de-novo assessment.

7. In the result, the appeal filed by the Assessee is allowed for statistical purpose.

Order pronounced in the open court on 21-02-2024

**Sd/-**  
**(WASEEM AHMED)**  
**ACCOUNTANT MEMBER True Copy**  
**Ahmedabad : Dated 21/02/2024**

**Sd/-**  
**(T.R. SENTHIL KUMAR)**  
**JUDICIAL MEMBER**

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
अहमदाबाद