

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “SMC”: NEW DELHI**

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No. 700/DEL/2024

Assessment Year: 2011-12

Anita Chauhan, Flay No. 310, Emerald My Home Jewel, Modinaguda, Tirumalagiri, Telangana-500094 PAN- AHBPC5910D	<u>Vs</u>	Income-tax Officer, Ward-1(1), Ghaziabad.
APPELLANT		RESPONDENT
Assessee represented by	Shri Naveen Garg, CA	
Department represented by	Shri Om Parkash, Sr. DR	
Date of hearing	18.03.2024	
Date of pronouncement	21.03.2024	

ORDER

PER KUL BHARAT, JM:

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, dated 21.12.2023, pertaining to the assessment year 2011-12. The assessee has raised following grounds of appeal:

“1. That the order passed by the Assessing Officer, and confirmed by CIT(A), National Faceless Appeal Centre (NFAC), New delhi, is bad on facts and in law in as much as it suffers from the vice of violation of the principles of natural justice and denial of opportunity of being heard, rendering the assessment void ab initio.

2. On the facts and in the circumstances of the case and in law, the Learned Commissioner of income Tax (Appeal), NFAC has grossly erred while rejecting the contention of the Assessee of not providing any opportunity by Assessing officer before passing of the Assessment order under sec. 144 r.w. Sec. 147 of the Act, 1961. The Notices issued by Assessing officer were never received by Assessee as the same were issued on wrong addresses where she was not living since 2014.

3. That on the facts and circumstances of the case and in law, the order passed u/s 147 r.w. sec. 144 of the Act by the Assessing Officer as confirmed by the Commissioner of Income Tax (Appeals), NFAC, is bad in law and void ab initio and only deserves to be quashed as addition made by AO is not based on any tangible material required under sec. 144 of the Act.

4. On the facts and in the circumstances of the case and in law, the Learned Commissioner of income Tax (Appeal) has grossly erred in confirming the addition of Rs.33,43,750/- (being 50% of total cost) and thus without reason, rejecting the facts that-

- i. The Appellant is simply a housewife and having no source of income, do not file any return for any of the Assessment year.
- ii. The Appellant did not make any investment in purchase of property and her name was included as spouse & her husband contributed the whole of investment in purchase of the property.”

2. Facts of the case, in brief, are that the AO received AIR information that assessee had purchased property worth Rs. 62,50,000/- on 08.07.2010 relevant for A.Y. 2011-12. The AO also found that the assessee had not filed her ITR for A.Y. 2011-12. Therefore, after getting approval of the Pr. CIT, Ghaziabad, in order to verify the source of investment in the property, the AO issued statutory notices to the assessee, which remained uncomplied. During assessment proceedings u/s 144/147 of the Act, the AO concluded that assessee along with her husband had

purchased property for Rs. 62,50,000/- and paid stamp duty of Rs. 4,37,500/- on registration. The AO considering 50% share of the assessee in property added Rs. 33,43,750/- as unexplained investment u/s 69 of the Act. Aggrieved against it the assessee preferred appeal to the CIT(A), who affirmed the action of the AO. Aggrieved against it, now the assessee is in appeal before this Tribunal.

3. Learned counsel for the assessee reiterated the submissions as made in the statement of facts. For the sake of clarity the statement of facts is reproduced as under:

“Smt. Anita chauhan, appellant, W/o Sandeep kumar chauhan, currently Rio Flat No 310, Block Emerald, My Home Jewels, Madinaguda, Miyapur, Hyderabad 500049, are residing there alongwith her husband since April, 2014 onward Prior to this date, she was residing at E-404, 40 Floor. Vijaya Apartment Ahinsakhand-II. Indirapuram Ghaziabad (U.P.). She is a Law abiding citizen having no source of income, being a house lady. Nolico u/s 148 dated 27.3.2018 issued by the Ld. AO, W-1 (1) Ghaziabad, has not been received. Thus, she has not filed her return of income during FY 2010-11 relevant to AY 2011-12 Her Hustiand Shri Sandeep Kumar Chauhan is a only earning member in her family. Presently, he is serving in B.A. Continnum India Ltd. Situated at Hyderabad as Asstt. Vice President, since, April, 2014 onward The Assessee is having PAN No.AHBPC5910D & Aadhar No. Is 2726 9412 9113 in which her current address of Hyderabad are found mentioned Her husband is a regular income tax assessee and filed his ITR for FY 2010-11 relevant to A Y 11 - 12 During the F.Y. 2010-11 relevant to A.Y. 2011-12, Shri Sandeep Kumar Chauhan, husband of assessee, and Smt. Anita Chauhan, has purchased an Immovable Property i.e. 3 BHK Flat No-404 fourth floor, Vijaya Apartment, Ahinsa khand- II, Indirapuram, Ghaziabad (U.P.) in the name of Self as 1st party and in the name of his wife as 2nd party. The purchase consideration of the said Flat is at Rs. 62,50,000/-(plus stamp duty etc. at Rs. 4,37,500/-) totalling Rs

66,87,500/- as per purchase deed dated 08.07.2010. (Photo copy enclosed marked as Annexure-1). The name of assessee has been introduced in the said acquired property due to religious purposes on their Customary belief & faith based upon Hindu Mythology i.e. Under which the wife of a person are always treated as Grih Laxmi and her name used in the newly acquired property deemed to be very prosperous for their future life On this analogy her name was introduced in the purchase deed.

Beside above, in the last week of December, 2018, she with her husband visited Indirapuram old Flat, as mentioned above, for its look after. Then she come to know from unknown sources that some IT proceedings are going on against her. Immediately her husband contacted some of his well-wisher and rushed into IT office for knowing full facts/details of such proceedings. Then it came to her knowledge that an ex-parte asstt order u/s 147/ 144 of IT Act 1961, has been passed against her for AY. 2011-12. Immediately, I moved an application on 3rd January, 2019, through her C, A for Inspection of her I.T. files before the Ld. A.O., W-1 (1), Ghaziabad, with request to provide a certified copy of assessment order a/w N.D. etc. for the Asstt Year in question, so that the first Appeals against the ex parte order u/s 147/ 144 of IT Act, 1961, may be filed before the Ld.CIT (A), Ghaziabad, within the the prescribed time limit as per I.T.Act/Rules. (Photo Copy of Application enclosed marked as Annexure-2). The said Certified copy of ND alongwith assessment order dated 30.11.2018 have been received to her through her CA on 7th January 2019.

On going through the aforesaid order it reveals that the Ld. A.O, Ward 1 (1). obtaining prior approval of the Id. Principal CIT, Ghaziabad, on the basis of AIR information after Ghaziabad, re-opened this case u/s 147 read with Soc 148 of I T Act after recording proper reasons Thereafter, issued various notices such as u/s 148, 142(1) and finally u/s 144 of IT Act, 1961, on different dates mentioning assessee's old address i.e. Flat No. E-404,Fourth floor, Ahinsa Khand-II, Indirapuram, Ghaziabad. (U.P.) for the purpose made in purchase of the property as discussed above.

Since the assessee had left this old premises/ address of Ghaziabad, much earlier than the notices sent for services, the aforesaid notices have not been received to the appellant obviously required compliance of such notices were not made. As a result, the Ld. AO has passed ex- parte asset. Order U/S 147/144 of IT Act on 30.11.2018 by making addition on account of unexplained investment u/s 69 o IT Act, of Rs. 3343750/-(being 50% share of

assessee in the acquired said property). Consequently, a huge unwarranted demand of Rs. 24,63,297/- has been created which include interest u/s 34A, MR 34C. The Ld. AO has also initiated penalty u/ 271(1) (c) of IT Act, 1961 and issued the said notice separately From the above action of Ld. AO, the following facts are emerges :-

That while examining the purchase deed and making computation of income, the Id AO has over looked to give credit of the home loan payment of Rs. 4500000/- when it was specifically appearing in the said deed. Thus, the Ld. AO has erred in law and on facts by treating the said home loan as unexplained u/s 69 of IT Act, 1961. This action of Ld.AO shows that he has passed this order in a hurried manner. Thus, it appears to be a frivolous addition

That rest of the investments have been made through Bank cheques, by her husband, out of his Bank A/c (copy of Bank Statement of RBB Bank enclosed Marked as Annexure \ Accordingly it is clear that assessee has not made any unexplained investments 169 of IT Act, 1961, or the said acquired property. This clearly shows that the Ld AO has not examined investment of said acquired property thoroughly.

That before Passing the said assessment order u/s 147/144 dated 30.11.2018, the Ld. AO has not tried to know the reasons behind the frequent non-compliance of aforesaid notices, by way of conducting local enquiry with the help of his ITT whether the appellant assessee was living or available currently on the address mentioned on the said notices or not? Particularly when he had abundant time available for the same, as this case was going to be time barred as on 11.03.2019 despite asstt. order passes on 30.11.2018.

That the appellant assessee has not been provided the proper opportunity of being heard before passing the said ex parte order Hence the version of Ld. AD regarding service of statutory notices & considering the purchase deed properly, in the aforesaid asstt. order, appears to be incorrect and far beyond from the real facts. In support thereof, the various evidences/documents containing Si No 1 to 8 under the head "List of Addl. Evidence/ Documents" attached along with letter u/s 46A of 17 Act, are being submitted herewith for your kind perusal and consideration

Keeping in view the above evidences/documents, the finding of Ld AD are not acceptable because appear that the said order has been passed in a hurried manner, arbitrarily, without making any enquiry or without examining the purchase deed available with him. Thus, require justice on merits of the case. Hence, it is prayed that all the notices as mentioned above may kindly Consider to be unserved upon the aggrieved assessee. Accordingly, Order passed U/s 147/144 dt. 30.11,2018 of the Ld. A.O. deserves to be quashed.”

3.1 Learned counsel submitted that assessee is a house-wife and has no source of income. Her name in the purchase deed was included by her husband. The AO over looked the fact that all payments through banking channel were made by assessee's husband. At the time when the AO issued notices, the assessee was residing at Hyderabad and no notice was served on the assessee. Learned counsel prayed that since assessee was prevented by sufficient cause in not attending the proceedings before AO, the ex parte order passed the AO may be set aside for decision afresh after affording reasonable opportunity of being heard to the assessee.

4. Learned DR opposed the submissions and supported the orders of authorities below.

5. I have heard rival submissions and perused the material available on record. It is pointed out that source of acquisition is well explained as out of total cost of acquisition of Rs. 66,87,500/- a sum of Rs. 45,00,000/- was home loan and entire expenditure was made by her husband from his duly explained source of income.

Considering the facts and circumstances of the present case, in order to provide an opportunity to the assessee to represent her case before the AO and to subserve the principles of nature justice I set aside the orders of authorities below and restore the matter to the file of AO for decision afresh, of course, after providing reasonable opportunity of being heard to the assessee. Grounds of appeal are allowed for statistical purposes.

6. Appeal of the assessee is allowed for statistical purposes.

Order pronounced in open court on 21st March, 2024.

**Sd/-
(KUL BHARAT)
JUDICIAL MEMBER**

MP

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**