

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F" DELHI**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
AND
SHRI SUDHIR KUMAR, JUDICIAL MEMBER**

ITA No.2198 /Del/2023
Assessment Year 2011-12

Pushp Lata Gautam, 317, Block-E, Pocket-3, Sector-18 Rohini, Delhi.	Vs.	Income Tax Officer, Ward 69(1) New Delhi.
TAN/PAN: AEWPG4888G		
(Appellant)		(Respondent)

Applicant by:	Shri Yash Bhadola, CA		
Respondent by:	Shri Vivek Vardhan, Sr.DR		
Date of hearing:	08	05	2024
Date of pronouncement:	10	05	2024

ORDER

PER PRADIP KUMAR KEDIA - A.M.:

The captioned appeal has been filed by the assessee against the order of the Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre, Delhi ('CIT(A)' in short) dated 02.06.2023 arising from the assessment order dated 30.10.2018 passed under Section 147 r.w. Section 144 of the Income Tax Act, 1961 (the Act) concerning AY 2011-12.

2. When the matter was called for hearing, the Id. counsel for the assessee submitted that the assessee is an individual and has earned salary income from employment in school. The assessee filed her return of income on 25.07.2011 declaring total income at Rs.2,99,786/-. The case of the assessee was reopened under Section 147 r.w. Section 148 of the Act and an addition of Rs.50,50,000/- was made on account of unexplained investment in house property. The AO completed the re-

assessment proceedings *ex-parte* and the taxable income was assessed at Rs.53,49,786/-. The Id. counsel thereafter adverted to the first appellate order and submitted that the compliance to certain notices issued in the course of reassessment proceedings were admittedly not made. Four out of five notices were issued within a span of one month and the assessee could not comply with such notices being dependent upon legal advisor. The assessee is a small time employee and does not understand such complex issues. Besides, the CIT(A) has passed the *ex-parte* order without any discussion on merits required in law under Section 250(6) of the Act.

2.1 On merits, the Id. counsel pointed out that the house property was purchased jointly with husband, Mr. Rakesh Gautam, and two children. A payment of Rs.5,50,000/- was made from bank account of the husband and Rs.45 lakh were sourced out of bank loan. Thus, the source is clearly available and investment in house property is not an unexplained investment as alleged. The source of such payment, approximately 90% from the bank loan itself proves the *bona fides* of the assessee and absence of any culpability towards non-compliances.

2.2 The Id. counsel next submitted that by purported non-compliances in such clear facts, the assessee does not gain anything but rather runs a serious risk of fastening with uncalled for tax liability.

2.3 The Id. counsel thus submitted that the facts requires to be seen in perspective and a holistic view be taken in the matter. The Id. counsel thus urged for restoration of the *ex-parte* order of the CIT(A) to the file of the AO for examination of facts and re-assess the taxable income.

3. The Id. DR for the Revenue did not offer any comment but relied upon the orders of the lower authorities.

4. We have considered the rival submissions and perused the material available on record.

5. The CIT(A) has passed summary order and dismissed appeal of Assessee *in limine* due to non-prosecution of appeal by the assessee before him. The CIT(A) has not considered the points for determination and not addressed such issues on merits. Such action contradicts the statutory provisions of Section 250(6) of the Act. Besides, the assessee seeks to explain the source of investment by making unflinching assertions. The unexplained investment is sought to be explained by resources of the husband of the bank loan. Thus, we see signs of *bona fides* and absence of culpability in non-compliances of notices issued by the CIT(A) in a very short span of time.

6. Keeping in mind, the humble background of the assessee and other factors narrated above and also to prevent miscarriage of justice, we find force in the plea of the assessee for setting aside the first appellate order and restoration of the issue for fresh determination by the AO.

7. We thus set aside and cancel the first appellate order and restore the issue for fresh determination in accordance with law by the AO designated for this purpose. The AO shall give reasonable opportunity to the assessee to raise such plea as may be advised and adduce evidences in support of her claim as may be considered appropriate. The assessee is cautioned to diligently attend the proceedings before the AO without any demur.

8. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 10 May, 2024.

Sd/-
[SUDHIR KUMAR]
JUDICIAL MEMBER

Sd/-
[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER

DATED: May, 2024
Prabhat