

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD " C " BENCH**

**Before: Smt. Annapurna Gupta, Accountant Member
And Shri T.R Senthil Kumar, Judicial Member**

**ITA No:348/Ahd/2024
Assessment Year: 2012-13**

Jalpa Savankumar Patel, 16 Upvan Twince, Near Shyamal, 3B Jivraj Park, Ahmedabad-380051. PAN: AADCC6478J (Appellant)	Vs	The Income Tax Officer, Ward 3(3)(2) Ahmedabad. (Respondent)
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Assessee Represented: Shri Biren Shah, AR

Revenue Represented: Shri Ashok Natha Bhalekar, SR-DR

Date of hearing : 16-05-2024

Date of pronouncement : 29-05-2024

आदेश/ORDER

PER T.R. SENTHIL KUMAR, JUDICIAL MEMBER

This appeal is filed by the assessee as against the ex-parte appellate order dated 30.01.2024 passed by the the National Faceless Appeal Centre (NFAC), Delhi arising out of the re-assessment order passed under section 147 r.w.s 144 of the Income-Tax Act, 1961 [hereinafter referred to as "the Act"] relating to the Assessment Year (AY) 2012-13.

2. The assessee is an individual and a home-maker did not earned any income and have not filed Return of Income for the Asst. Year 2012-13. The assessee acquired an immovable property on 01.12.2012, for a consideration of Rs.90 lacs and paid the consideration amount through banking cheque. As the assessee

failed to explain the source of investment for the immovable property, the case was re-opened by issuing notice u/s.148 of the Act on 27.03.2019 and was duly served upon the assessee. However, the assessee has not responded to the notice. The AO has issued notice u/s.142(1) on 21.09.2019 and 16.11.2019 requesting the assessee to furnish the details/information of purchase of property. However, there was no response, therefore a final show-cause notice was issued on 21.11.2019 to explain the details. However, the assessee failed to reply to any of the notices thereby the AO assessed the purchase of the immovable property of Rs.90 lacs as an income of the assessee and demanded tax thereon.

3. Aggrieved against the ex-parte order, the assessee filed an appeal before CIT(A)-3, Ahmedabad on 26.12.2019 explaining the source of investment namely her husband employed in Adani Infra Ltd. enclosing Form No.16 and bank statements of her husband for Rs.78 lacs. Further, the property was acquired with her mother-in-law Smt.Varsha Patel as co-owner and Rs.12 lacs was paid by her. Therefore, requested to delete the additions in her hands and allow the appeal. However, the Ld.CIT(A), held that as per section 249(4)B of the Act, the appeal is not maintainable as the assessee failed to pay required advance tax and dismissed the appeal as not maintainable.

4. Aggrieved against the same, the assessee is in appeal before us, raising the following grounds.

1. In the facts and circumstances of the Appellants case, the Ld. Assessing Officer has grossly erred in considering entire amount of INR 90,00,000 as unexplained investment of the Appellate.

2. In the facts and circumstances of the Appellants case, investment of the Appellate shall not be considered as unexplained investment.

3. In the facts and circumstances of the Appellants case, the source of joint investment by the Appellant is explainable before your honor.

4. In the facts and circumstances of the Appellants case, the Ld. Assessing Officer has erred in levying interest under section 234A and 234B of the Act.

5. The appellant craves leave to add, alter, amend and/or withdraw any ground or grounds of appeal either before or at the time of hearing of the appeal.

5. The Ld.Counsel appearing for the assessee submitted that the assessee is not liable for Income-tax, since there was no income in her hands. The investment in the immovable property were from the husband's salary Income and her mother-in-law income. Therefore, the addition made of Rs.90 lacs in her hands is liable to be deleted. Further, Ld.CIT(A), without giving any opportunity of hearing to the assessee, about the maintainability of the appeal dismissed the same and requeste to allow the appeal.

6. Ld.CIT-DR appearing for the Revenue, supported the order passed by the lower authorities are requested to confirm the same.

7. We have given out thoughtful consideration and perused the materials available on records. It is seen from the appellate order, there is no whisper of any information having provided the assessee opportunity of hearing by NFAC, before dismissing the appeal. The provision of section 249(4) reads as under:

"...No appeal under this Chapter shall be admitted unless at the time of filing of the appeal.-

(a) where a return has been filed by the assessee, the assessee has paid the tax due on the income returned by him, or

"(b) where no return has been filed by the assessee, the assessee has paid an amount equal to the amount of advance tax which was payable by him Provided that, in a case falling under clause (b) and) on an application made by the appellant in this behalf, the Deputy Commissioner (Appeals)] or, as the case may be, the Commissioner (Appeals)] may, for any good and sufficient reason to be recorded in writing, exempt him from the operation of the provisions of 5 that clause)..."

8. As per section 249(4) of the Act, in case where no Return had been filed by the assessee and application made by the assessee in this behalf, the Commissioner(Appeals) may for any good and sufficient reason to be recorded in writing exempt the assessee from the operation of the provisions of clause (b) of section 249(4) of the Act. In the statement of facts filed before the Ld.CIT(A), the assessee has clearly explained the source of investment of Rs.78 lacs is from her husband Shri Savankumar Patel, by enclosing his salary certificate in Form No.16 and also bank statements of her husband. It is further explained the amount paid by husband to his wife does not attract any tax implication u/s.56(2)vii) of the Act, as the husband and wife are well within the "relatives" as defined in the explanation to section 56(2)(vii) of the Act. However, without considering the any of this submission/document filed by the assessee and without furnishing opportunity to the assessee, Ld.CIT(A) dismissed the appeal as not maintainable, which in our considered view is arbitrary and against the provisions of law. Since the assessment order also being an ex-parte order, in the interest of justice, we deem it fit to set-aside the matter to the file of Jurisdictional Assessing Officer to decide the case on merits, after considering the explanation and document to be submitted by the

assessee, before the JAO. Needless to say, the assessee should co-operate by filing the all these documents before the Jurisdictional Assessing Officer for passing afresh assessment. Thus, the appeal filed by the assessee is allowed with the above direction.

9. In the result, the appeal is allowed for the statistical purposes.

Order pronounced in the open court on 29-05-2024

**Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER**

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

Ahmedabad : Dated ^(True Copy) **29/05/2024**

Manish