

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “D” BENCH, AHMEDABAD**

**BEFORE SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER AND
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER**

**ITA No.664/Ahd/2023
Assessment Year: 2017-18**

Margi Darpan Shah, A-20, Shukla Nagar, B/h. Prabhat Society, Waghodia Road, Vadodara – 390 019 Gujarat. [PAN – BEUPS 7563 B] (Appellant)	Vs.	The Assistant Commissioner of Income Tax, Circle – 1(1)(2), Vadodara. (Respondent)
Assessee by	Shri Abbas Saykalwala, AR	
Revenue by	Shri Karun K. Ojha, CIT (DR)	
Date of Hearing	20.05.2024	
Date of Pronouncement	28.05.2024	

ORDER

PER SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER:

This appeal is filed by the assessee against order dated 28.06.2023 passed by the CIT(A), National Faceless Appeal Centre (NFAC), Delhi for the Assessment Year 2017-18.

2. The Assessee has raised the following grounds of appeal:-

- “1. *The Learned CIT(A) had dismissed appeal filed by appellant against the AO order under Section 144 of the Act due to circumstances beyond the control of the appellant and appellant could not make her submission before Learned CIT(A).*
2. *An appellant could not file her income tax return and not able to submit required documents and information on time during the course of assessment and first appellate proceeding because of personal, social and financial*

problems i.e. husband of the assessee is in imprisonment and he is currently on bail for two months and criminal cases had been filed against husband of appellant and firm and medical issue and death of father-in-law (detailed history is enclosed in Annexure A).

3. *I hereby pray your honor to in view of above reasonable causes for non-compliances, appellant hereby pray for set aside order of Assessing Officer.*
4. *Appellant hereby pray to remand case back to CIT(A) for fresh hearing.”*

3. At the outset, we observe that there is a minor delay of two days in filing of the present appeal. However, looking into the quantum of additions made in the hands of the assessee amounting to Rs.6.29 Crores and the delay of a small period of two days in filing of the present appeal, the delay in filing of the present appeal is hereby condoned.

4. The brief facts of the case are that the assessee had not filed the return of income for the impugned Assessment Year, but had deposited cash of Rs.11,50,000/- in the bank account during demonetization period. Thereafter, the assessment proceedings were initiated against the assessee and on an analysis of the facts of the assessee, the Assessing Officer observed that there were total cash deposits amounting to Rs.49,32,000/- in various Bank Accounts held by the assessee and there were credit entries amounting to Rs.3,16,45,962/- in these bank accounts. Further, the Assessing Officer observed that the assessee is having time deposits in various bank accounts amounting to Rs.1,86,20,000/- and the assessee was asked to provide the source of investments in such time deposits. Further, the Assessing Officer observed that the assessee had sold some shop for a sum of Rs.47,08,950/- on 26.05.2016 and accordingly the assessee was asked as to why the entire amount of sale consideration should not be treated as short term capital gain in the hands of the assessee. In addition to the above, the Assessing Officer observed that as per the details available in Form No.26AS, the assessee had also received rental income amounting to Rs.8,18,364/-. However, the

assessee had not filed her return of income declaring the aforesaid income in her return of income and paid due tax thereon. The assessee was given several opportunities of hearing, however, none appeared on behalf of the assessee during the course of assessment proceedings. In view of the above, the Assessing Officer added a sum of Rs.6,29,03,633/- as unexplained income as income in the hands of the assessee. The penalty proceedings were also separately initiated against the assessee.

5. In appeal before the CIT(A), again despite several opportunities, none appeared on behalf of the assessee. Accordingly, the Ld. CIT(A) confirmed the additions made in the hands of the assessee with the following observations:-

“5.0. During the appellate proceedings, the appellant has only submitted submission in the form of 'Statement of Facts'. After that neither he has replied to hearing notices nor submitted any documentary evidence/information to prove his side. Sufficient and adequate opportunities were afforded to the appellant as indicated at table at serial No.4. No reply whatsoever has been submitted by the appellant. It can be safely presumed that the appellant is not interested in pursuing his appeal. Therefore, the undersigned sees no reason to interfere with the orders of the Assessing Officer. Thus, the appeal raised by the appellant is dismissed.”

6. The assessee is in appeal before us against the aforesaid order passed by Ld. CIT(A), dismissing the appeal of the assessee. Before us, the Counsel for the assessee submitted that the assessee could not cause the appearance before the Assessing Officer or before the Ld. CIT(A) owing to certain personal difficulties. The Counsel for the assessee submitted that the first reason for non-appearance was that the husband of the assessee Shri Darpan Shah was under imprisonment for the last two years and it was her husband who was taking care of the entire business operation. Further, the father-in-law of the assessee was seriously ill and had also expired on 18.12.2022. In addition to the above, due to non-completion of certain projects various buyers had filed criminal complaints for non-possession of the properties sold and, therefore, the assessee and her husband were under high pressure on account of various complaints/FIR/litigation which has been initiated against the

assessee's husband. Accordingly, it was in view of the above facts and circumstances that the assessee could not cause appearance either before the Assessing Officer or before the Ld. CIT(A).

7. **On merits**, the Counsel for the assessee submitted that in the instant facts, the Assessing Officer has proceeded to add the entire amount of credits (amounting to Rs.3.16 crores) and cash deposits (Rs.49 lakhs) as unexplained income of the assessee, without even considering the withdrawals/debits made in the aforesaid bank accounts held by the assessee. Further, the assessee was having certain time deposits in the bank account amounting to Rs.1.86 crores, which were out of business operation and, therefore, the Assessing Officer was not justified in adding the entire amount of time deposit held by the assessee in her bank account as unexplained investment in the hands of the assessee. Further, the Counsel for the assessee pointed out that while computing the short-term capital gain in the hands of the assessee amounting to Rs.47 lakhs, the Assessing Officer has taken cost of acquisition of such property as Rs.1/-. However, it was submitted before us that in the instant transaction there was in fact a short-term capital loss which had been incurred by the assessee since the purchase consideration amounting to Rs.53 lakhs approximately was in excess of the sale consideration of Rs. 47 lakhs. Accordingly, Counsel for the assessee submitted that the assessee was precluded from extraneous circumstances causing appearance before the Tax Authorities as given/highlighted in the preceding paragraphs. Further, looking into huge quantum of addition which have been made in the hands of the assessee, the assessee cannot be in a position to completely explain the source of deposit/credit entries/time deposits which have been added as unexplained investment in the hands of the assessee. Accordingly, looking into the instant facts, Counsel for the assessee requested that the matter may kindly be restored to the file of the Assessing Officer, for *denovo* consideration, in the interest of justice.

8. In response, the Ld. DR submitted that the assessee has been continuously causing non-appearance for a period of almost five years before the Assessing Officer and the Ld. CIT(A), despite issuance of several notices of hearing. Accordingly, the Ld. DR submitted that the assessee cannot be afforded another round of hearing and the additions are liable to be confirmed in the hands of the assessee.

9. We have heard the rival contentions and perused the material on record. On going through the facts of the instant case and the circumstances highlighted by the assessee for non-appearance before the Lower Authorities, the quantum of additions made in the hands of the assessee amounting to Rs.6.29 crores and looking at the nature of additions made, whereby entire credit entries and cash deposits/time deposits/sale consideration on sale of property have been added in the hands of the assessee, thereby creating a huge tax demand, we are of the considered view that in the interest of justice, the matter may be restored to the file of the Assessing Officer for *denovo* consideration after giving due opportunity of hearing to the assessee. However, we also direct the assessee to promptly and diligently comply with all the notices of hearing issued by the Assessing Officer and in case of any further non-compliance on the part of the assessee in responding to the notices issued by the Assessing Officer, the Assessing Officer would be at liberty to pass appropriate order, on the basis of material available on record, in accordance with law.

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

Order pronounced in the open Court on this 28th May, 2024.

Sd/-
(NARENDRA PRASAD SINHA)
Accountant Member

Sd/-
(SIDDHARTHA NAUTIYAL)
Judicial Member

Ahmedabad, the 28th day of May, 2024

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Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

*Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad*