

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"C" BENCH, MUMBAI**

**SHRI AMARJIT SINGH, ACCOUNTANT MEMBER  
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 259/MUM/2024  
(Assessment Year: 2013-14)**

**Irshad Zafar Malik,**  
H. No. 101, Sector-II,  
Haroon Nagar Colony,  
Phulwarishariff,  
Patna -800002  
[PAN: APFPM4162H]

..... **Appellant**

**Assistant Commissioner of Income  
Tax (International Taxation)-  
3(2)(2), Mumbai**

Vs

..... **Respondent**

**Appearance**

For the Appellant/Assessee : None  
For the Respondent/Department : Shri H.M. Bhatt

**Date**

Conclusion of hearing : 27.05.2024  
Pronouncement of order : 30.05.2024

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**ORDER**

**Per Rahul Chaudhary, Judicial Member:**

1. By way of the present appeal the Assessee has challenged the order, dated 10/03/2023, passed by the Ld. Commissioner of Income Tax (Appeals)-57, Mumbai for the Assessment Year 2013-14, whereby the Ld. CIT(A) had dismissed the appeal of the Assessee against the Assessment Order, dated 26/12/2018, passed under Section 144 read with Section read with Section 147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').
2. The Appellant has raised the following grounds of appeal:

1. *For that the Ld. CIT(A) has erred in sustaining the order of the A.O. and thereby affirmed the additions made by the A.O. amounting to Rs.58,33,118/- (Rs.38,43,118/-+ Rs.19,90,000/-).*
2. *For that the Ld. CIT(A) has erred in not allowing proper and adequate time for personal appearance which was granted vide notice dated 27/12/2022 for compliance on 03/01/2023 i.e. 7 days without considering the fact that the appellant is an NRI and his counsel is stationed at Patna.*
3. *For that the Ld. CIT(A) has erred in violating the principles of natural justice by disposing of the appeal without personal hearing.*
4. *For that the Ld. CIT(A) has erred in not adjudicating ground no.2, 3 & 4 whereby the appellant has adjudicated the very initiation of proceedings u/s 147/148 of the Income Tax Act.*
5. *For that the Ld. CIT(A) has erred in upholding addition of Rs.38,43,118/-u/s 69/68 on account of investment in purchase of two properties.*
6. *For that the Ld. CIT(A) has erred in holding that the appellant has not given his sources of income in UAE and has also not given any evidence of payment made to seller in order to prove the source of investment in the immoveable property.*
7. *For that the Ld. CIT(A) has erred in holding that the appellant has also not furnished details of payment to sellers to the extent of Rs.6,08,118/- by the relatives of the appellant.*
8. *For that the Ld. CIT(A) has erred in adding Rs.19,90,000/- on account of deposit in NRE Bank Account No.426413 with ICICI Bank.*
9. *For that the Ld. CIT(A) has erred in holding that the assessee has not provided details of remittance from foreign Bank which has been claimed to be the source of deposit of Rs. 19,90,000/-.*

10. *For that the additions made amounting to Rs.38,43,118/- and Rs. 19,90,000/- are wrong, illegal and unjustified in the facts and circumstances of the appellant's case.*
  11. *For that the appellant reserves its right to furnish detailed written submission along with documents and evidences on or before date of hearing.*
  12. *For that the appellant may be given opportunity of personal hearing physically/virtually at the time of hearing of the appeal.*
  13. *For that the whole order is bad in fact and law of the case and is fit to be modified and/or restored back of CIT(A) for decision a fresh after providing opportunity of personal hearing through physical/ virtual mode.*
  14. *For that the other grounds, if any, shall be urged at the time of hearing of the appeal."*
3. When the appeal was taken up for hearing, none was present on behalf of the Appellant. The Ld. Departmental Representative pointed out that the appeal is barred by limitation. On perusal of the documents on record, we find that the Appellant had filed application seeking condonation of delay stating that the counsel for the Appellant got the knowledge of the impugned order, dated 10/03/2023, having been passed by the CIT(A) on 09/01/2024 and the appeal was filed within a period of 60 days thereafter. Therefore, the appeal be treated as having been filed in time. In alternative, it was contended that the Appellant had sufficient cause for not presenting the appeal in time before the Tribunal. In the application seeking condonation of delay it has been stated as under:

*"I am an NRI and working as an Engineer in Dubai (UAE). I am permanent resident of Phulwarisharif, Patna, Bihar. I had filed one appeal against order of assessment by ACIT (International Taxation)-3(2)(2), Mumbai on 30/01/2019 before CIT(A) 57,*

*Mumbai electronically on 30/01/2019. I have engaged Mr. Jugnu Deb, Advocate stationed at Patna for pursuing the appeal and pursuant to notices of hearing dated 15/02/2021, 08/02/2022, 24/05/2022 and 26/07/2022, he has uploaded written submissions on 09/03/2021, 09/04/2022, 04/06/2022 and 13/08/2022. Thereafter, opportunity of personal hearing was granted vide notice dated 27/12/2022 for compliance on 03/01/2023. Due to pre-occupation, my counsel stationed at Patna could not attend the said personal hearing and thereafter, nothing was heard from the office of CIT(A).*

*I had received information from the counsel on 09<sup>th</sup> January, 2024 that the said appeal has been dismissed by the CIT(A) way back on 10/03/2023. On further advice, he made me aware of my vested right of appeal against the said order before the Income Tax Appellate Tribunal, Mumbai Bench, Mumbai and according to him, the appeal is to be filed within 60 days of communication of order to the assessee. He further pointed out that this order was uploaded on the e-portal under the tab "For your information" way back on 10/03/2023 and hence, the appeal could be treated as belated from the date of order and its uploading on e-portal.*

*Sir, I have entrusted my counsel Mr. Jugnu Deb and this order of CIT(A) has come to my knowledge only on 09th January, 2024 through my counsel and hence, the present appeal may not be treated as a belated appeal as the same is being filed much before expiry of limitation of 60 days.*

*However, should for any reason, if this appeal is treated as a belated appeal by counting the limitation from the date and uploading of the order on the e-portal, I earnestly pray that the delay in filing of the appeal may kindly be condoned as I am prevented by sufficient and reasonable cause from not filing the appeal within the timeline from the date of order and/or its uploading of order on the e-portal.*

*As per the advice of my counsel, I am electronically filing the appeal along with condonation petition and affidavit of my counsel enumerating therein the circumstances in which the order of CIT(A) came to his knowledge and thereafter, in my knowledge. Further, in Form 36, the email Id and Mob. No. of my counsel is given besides my email i.e. irshadzafarmalik@yahoo.com.*

*It is therefore requested that your honour would be kind enough to condoned the delay and hear the appeal on merits."*

4. The Appellant has also placed on record affidavit sworn by the Counsel authorized to pursue appeal before the CIT(A) which read as under:

*"I Jugnu Deb, son of Late Surendra Kumar, permanent resident of Vivekananda Nagar, Bengali Colony, Po- Begampur, Patna City, Patna 800009 do hereby solemnly affirm and declared as follows:*

*1. That I am the counsel of one Irshad Zafar Malik (PAN: APFPM4162H) who is an NRI and lives in Dubai (UAE).*

*2. That I was looking after his appeal pending before CIT(A) 57, Mumbai and has uploaded online written submissions on 09/03/2021, 09/04/2022, 04/06/2022 and 13/08/2022 pursuant to notice of hearing dated 15/02/2021, 08/02/2022, 24/05/2022 and 26/07/2022. Thereafter, opportunity of personal hearing was granted vide notice dated 27/12/2022 for compliance on 03/01/2023.*

*3. That since the time allowed from the date of notice for personal hearing was too short and due to my pre-occupation in other matter, I could not attend the personal hearing on 03/01/2023 and thereafter, nothing was heard from the office of CIT(A).*

*4. That another assessee of mine namely Pahari Prathmic Krishi Sakh Society (PAN: AAAJP1328G) has come to me on 09/01/2024 with an order of CIT(A), NFAC dated 09/01/2024 in appeal no.CIT(A), Patna-1/10705/2019-20 communicated vide DIN and Order No. ITBA/NFAC/S/250/2023-24/ 1059525287(1).*

*5. That out of curiosity I have browsed the e-portal of Mr. Irshad Zafar Malik and has found that appellate order in Appeal No. CIT(A) 57, Mumbai/10275/2018- 19 dated 10/03/2023 dismissing the appeal was lying in the e-portal under the our information".*

*6. That this order came to my knowledge on 09/01/2024 and thereafter I brought it to the knowledge of the assessee on the same date i.e. 09/01/2024 and accordingly, this e-appeal is being filed before the Income Tax Appellate Tribunal, Mumbai Bench, Mumbai.*

*7. That the contents of this affidavit vide para 1 to 6 are true to the best of my knowledge and belief."*

5. There is nothing on record to disbelieve averments made in the application and the facts stated in the affidavit sworn by the Counsel. It is admitted fact that the Appellant is a non-resident Indian who lived in Dubai, UAE at the relevant time and had entrusted the responsibility of pursuing to appeal its Counsel. In the affidavit sworn by the counsel it has been stated that he got to know about the order, dated 10/03/2023, having been passed by the CIT(A) on 09/01/2024. The appeal was filed within a period of 60 days thereafter. We are of the view that in the facts and circumstances of the present case the delayed knowledge of the impugned order having been passed constitutes sufficient cause for not filing appeal within time. Therefore, the delay in filing the appeal taking the date of order as the date of service is condoned.
6. Accordingly, we proceed to decide the issue raised in the present appeal after taking into consideration the submissions advanced by the Ld. Departmental Representative and the material on record.
7. The Appellant has placed on record statement on fact, wherein it has been stated as under:

*"The appellant is an NRI and is working as an Engineer in Dubai (UAE) for the last several years. The appellant has no business/profession in India and his income in India from bank interest has not exceeded the maximum amount chargeable to tax in India and hence, no return has been filed for the year*

*under consideration. The appellant is maintaining two bank accounts with ICICI Bank which are NRE/NRO account and the deposits in the said bank account are transfer from bank accounts maintained abroad. Notice u/s 148 dated 09/11/2017 was issued alleging escapement of income of Rs.35,17,000/- on the basis of AIR information regarding purchase of property. During the course of assessment proceedings, it was communicated vide email dated 08/12/2018 that he is not required to file return and that he was non-resident during the relevant period and in support of the contention so raised, the copy of passport was submitted. It was also stated that he is getting salary from his employment at Dubai. It was also stated that he has purchased two properties for a consideration of Rs.21 lakhs and Rs.14,07,000/- on 28/12/2012 and 01/09/2012 in India. Further, in course of assessment proceedings online reply dated 08/12/2018 and 26/12/2018 were submitted along with evidences such as copy of bank statements in support of the sources of acquisition of immovable property, copy of purchase deeds and the details of his stay in Dubai for the year 2011 to August, 2018 which was supported by the copy of passport in support of the contention that he has been Non-Resident Indian all through in F.Y.2012-13 corresponding to A.Y.2013-14 besides other years.*

*The A.O. without considering the two replies and the evidences submitted therein has pass the impugned assessment order u/s 144/147 assessing the appellant on a total income of Rs.59,07,007/- which inter alia include Rs.38,43,118/- u/s 69 and also u/s 68 (page 4 para 3.2 of assessment order) besides deposit of Rs. 19,90,000/- in A/c No.426413 with ICICI Bank on the ground that the same is a saving bank account and not an NRE/NRO account.*

*Aggrieved by the said order the appellant has filed appeal before the Ld. CIT(A) and the Ld. CIT(A) vide order dated 10/03/2023 has been pleased to confirm the addition made by the A.O. and thereby dismissed the appeal on the ground that the appellant has not provided the source of his income from UAE nor has given any evidence of payment made to sellers in order to prove the sources of investment in purchase of immovable property and has also not furnish the details of payment to sellers to the extent of Rs.6,08,118/- by appellant's relatives. In respect of addition of Rs.19,90,000/- on account of deposit in bank account no.426413 with ICICI Bank the assessee has not provided any*

*details of remittance from Foreign Bank Account which is claimed to the source of deposit of Rs. 19,90,000/-. The CIT(A) has fair enough to admit the said bank account is an NRE account and not a saving bank account as alleged by the A.O.*

*The appellant is filing this appeal along with condonation petition and affidavit of his counsel namely Mr. Jugnu Deb, Advocate with a prayer to condoned the delay and hear the appeal on merits.”*

8. On perusal of the above along with the assessment order, we find that the re-assessment proceedings under Section 147 of the Act were initiated in the case of the Appellant on the basis of information received that the Appellant has purchased immovable property in India having aggregate purchase price of INR 35,17,000/-. During the assessment proceedings, in order to satisfy the Assessing Officer about the nature and source of investment in immovable property, the Appellant filed copy of bank statements of two bank accounts maintained by the Appellant showing deposit of INR 19,90,000/-. The contention of the Appellant was that the immovable properties under consideration were purchased from the funds withdrawn from the aforesaid two Non-Resident External (NRE) bank accounts. The Assessing Officer was of the view that the accounts maintained by the Appellant were savings bank accounts and the Appellant had failed to furnish the source of credits into those bank accounts as well as the source of investments made in the purchase of the immovable property, stamp duty charges and registration fee aggregating to INR 38,43,118/-. Accordingly, the Assessing Officer made an addition of (a) INR 38,43,118/- under Section 69 of the Act holding the same to be unexplained investments; (b) INR 19,90,000/- under Section 68 of the Act in respect of aggregate deposit made in the aforesaid two bank accounts; and (c) INR 73,889/- being interest credited to the aforesaid two bank accounts; to arrive at the total

assessed income of INR 59,07,007/-.

9. Being aggrieved by the Assessment Order, dated 26/12/2018, passed under Section 144 read with Section 147 of the Act. The Appellant preferred appeal before CIT(A) challenging the validity of reassessment proceedings as well as the legal propriety of the additions made on merits. The Appellant also appointed Counsel to pursue the appeal before CIT(A) who filed online written submission and requested for opportunity of personal hearing. Though opportunity of personal hearing was granted on 03/01/2023, vide notice dated 27/12/2022. The Counsel for the Appellant could not attend the hearing on account of his pre-occupation. The Appellant was proceeded ex-parte and the appeal was dismissed vide order dated 10/03/2023. However, the Counsel for the Appellant got to know about the dismissal of the appeal on 09/01/2024 on accessing the order dated, 10/03/2023, online. Thereafter, the Appellant filed the present appeal on the grounds reproduced in paragraph 2 above.
10. Before us, ground has been raised by the Appellant contending that reasonable opportunity of being heard was not granted to the Appellant. We find merit in the aforesaid contention as opportunity personal hearing was given on 03/01/2023 vide notice dated 27/12/2022 giving a very short period of time to the Counsel for the Appellant. Further, no opportunity of personal hearing was granted thereafter and ex-parte order was passed on 10/03/2023 dismissing the appeal. We find that the Assessing Officer and the CIT(A) have proceeded on the assumption that NRE account cannot be in the nature of savings account without carrying out any inquiry or verification. The Assessing Officer and the CIT(A) have failed to appreciate that even NRE account could be a variation of saving account.

Further, the legal grounds challenging the validity of reassessment proceedings have been dismissed by the CIT(A) without dealing with the grounds/contentions raised therein by simply stating that the Appellant had failed to make specific submissions. Keeping in view, over all facts and circumstances of the case, we set aside the order, dated 10/03/2023, passed by the CIT(A) and restore the appeal back to the file of CIT(A) for denovo adjudication after giving the Appellant opportunity of being heard as per law. The Appellant is directed to file consolidated written submissions and paper-book before the CIT(A) on getting the notice of hearing. The Appellant is also directed to be vigilant and to track the status of the appeal on regular basis on ITBA Portal. In terms of the aforesaid, Ground No. 3 and 13 raised by the Appellant are allowed, whereas all the other grounds raised by the Appellant are disposed of as being infructuous.

11. In terms of the above, the present appeal is allowed for statistical purposes.

Order pronounced on 30.05.2024.

**Sd/-**  
**(Amarjit Singh)**  
**Accountant Member**

**Sd/-**  
**(Rahul Chaudhary)**  
**Judicial Member**

मुंबई Mumbai; दिनांक Dated : 30.05.2024  
Alindra, PS

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT,  
Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai