

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI "B" BENCH: NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER &  
SHRI M.BALAGANESH, ACCOUNTANT MEMBER**

**ITA No.71/Del/2024  
[Assessment Year : 2017-18]**

Gouri Madan, 19/14, East Punjabi Bagh, New Delhi-110026 <b>PAN-AOSPM7266A</b>	vs	ITO, Ward-44(6), New Delhi.
<b>APPELLANT</b>		<b>RESPONDENT</b>

**ITA No.2816/Del/2022  
[Assessment Year : 2017-18]**

Gouri Madan, 19/14, East Punjabi Bagh, New Delhi-110026 <b>PAN-AOSPM7266A</b>	vs	ACIT, Central Circle-17, New Delhi.
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Appellant by</b>	Shri Ashok Khandelwal, CA & Shri Akash Khandelwal, CA	
<b>Respondent by</b>	Shri Vivek Kumar Upadhyay, Sr.DR	
<b>Date of Hearing</b>	09.04.2024	
<b>Date of Pronouncement</b>	10.06.2024	

**ORDER**

**PER KUL BHARAT, JM :**

Both appeals filed by the assessee are directed against the different orders passed by Ld.CIT(A)-27, New Delhi dated 30.01.2020 for the assessment year 2017-18 and Ld.CIT(A)-30, New Delhi dated 27.10.2022 for the assessment year 2017-18. Since grounds raised in both appeals are interconnected, both appeals of the assessee are taken up together for hearing and are being decided by way of this consolidated order for the sake of brevity.

**ITA No.71/Del/2024 [Assessment Year : 2017-18]**

2. First, we take up the appeal of the assessee in the Assessment Year 2017-18 in ITA No.71/Del/2024. The assessee has raised following ground of appeal:-

1. *“Action of the CIT(A) s confirming an addition of Rs.29,52,101/- on account of jewellery is unjust, illegal, arbitrary and against the facts and circumstances of the case.”*

3. The present appeal filed by the assessee is barred by time. It is noted that the Registry has reported the delay of 1380 days in filing the present appeal. The assessee has filed a separate application seeking condonation of delay.

4. Ld. Counsel for the assessee reiterated the submissions as made in the application seeking condonation of delay in filing the appeal. It is contended that the impugned order was passed on 30.01.2020 and during that period, there was global outbreak of Covid-19 Pandemic and lockdown was imposed in the country. It is contended that the period of Covid-19 pandemic was 15.03.2020 till 28.02.2022 has been otherwise condoned by the Hon'ble Supreme Court in ***Suo Moto Writ Petition No.3 of 2020 dated 10.01.2022.*** It is contended that husband of the assessee, Late Shri Naveen Madan was suffering from Cancer and died on 03.08.2022. The entire family was under shock and due to illness, she was not in a position to file the appeal in time. It

was further submitted that even the assessee and her sons were under going treatment for depression and other ailments.

5. Ld.Sr.DR for the Revenue opposed these submissions and submitted that the assessee had been negligent for not pursuing the matter.

6. We have heard the contentions of both the parties and perused the material available on record. Looking to the facts and evidences placed before us and in the light of the binding precedent in this regard by Hon'ble Supreme Court in ***Suo Motu Writ Petition (Civil) No.3 of 2020 regarding "Cognizance For Extension Of Limitation"***, vide order dated **23.02.2020**, had extended the period of limitation of filing of appeals till further orders. Therefore, in view of the order of Hon'ble Supreme Court and there was a reasonable cause for not filing the appeal in time, the delay of 1380 days in filing the appeal is condoned and the appeal filed by the assessee is taken up for hearing.

7. Facts giving rise to the present appeal are that a search and seizure operation u/s 132 of the Income Tax Act, 1961 ("the Act") was carried out the Investigation Wing of the Income Tax Department on 22.10.2016. The residential premises of the assessee was also covered. Thereafter, the assessee filed her return of income, declaring total income of INR 7,98,430/- on 12.03.2018. The case of the assessee was selected for scrutiny assessment and in response to the statutory notices, the Ld. Authorized Representative ("AR") of the assessee contended that proceedings. The Assessing Officer

("AO") during the course of assessment proceedings, issued questionnaires dated 05.11.2018 and thereafter, a show cause notice dated 04.12.2018 was issued to the assessee, calling upon the assessee to explain as to why the profit amounting to INR 1.56 crores should not be treated as unaccounted income of the assessee. The basis of this notice was the chats in form of whatsapp messages seized and recovered during the search proceedings. The AO thereafter, made addition of INR 1.56 crores on the basis that no response has been filed by the assessee. Further, the AO noticed that there was a settlement of loss in the Poker Game since there was no explanation on behalf of the assessee and a sum of INR 86,50,000/- was added to the income of the assessee. The AO also made addition of INR 17,17,500/- in respect of the profit earned from betting on Cricket Match. It is recorded by AO that at there were whatsapp messages for settlement of loss of INR 10,00,000/-. This amount was added to the income of the assessee as unexplained. The AO made other additions in respect of investment in Jewellery and investment in Sukhija Group amounting to INR 37,87,894/- and INR 1.35 crores respectively. Thus, the AO after making aforementioned additions computed income of assessee at Rs. 4,50,53,624/-.

8. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A), who after considering the submissions, substantially allowed the appeal of the assessee. Thereby, he deleted the addition made on account of gaming activities and out of addition on account of investment in Jewellery was restricted to INR 29,52,101/-.

9. Aggrieved against the order of Ld.CIT(A), the assessee is in appeal before this Tribunal.

10. We have heard Ld. Authorized Representatives of the parties and perused the material available on record and gone through the orders of the authorities below. At the outset, apropos to the grounds of appeal, it is pointed out that the impugned additions were made on protective basis. The Revenue had challenged the deletion of addition before this Tribunal in ITA Nos.1828 & 1829/Del/2020 for the AYs 2016-17 & 2017-18 wherein Co-ordinate Bench of the Tribunal vide its order dated 18.07.2023 has set aside the impugned order and restored to the file of Ld.CIT(A) for fresh adjudication of appeals alongwith Late Shri Naveen Madan. The relevant contents of the order of the co-ordinate Bench in ITA no. 1829/Del/2020 are reproduced below:

*“8. Our conclusion also gets strong support from the order of ITAT Kolkata Bench in the case of DCIT Vs. M / s Nalimbur Suppliers (Pvt) Ltd (supra) wherein, under identical facts and circumstances the coordinate bench held that the issue of protective addition is consequential to the issue of relief to the addition made on substantive basis therefore, the Tribunal remitted back the issue to the file of Id CIT(A) for afresh adjudication along with relevant appeals wherein substantive addition has been made.*

*9. In view of foregoing discussion, the first appellate order is not found to be sustainable and even directions of the Id CIT(A) to the AO are not in accordance with the proposition rendered by the Gujarat High Court in CIT vs. Surendra Gulab Chand Modi (supra). Therefore, first appellate orders in both the appeals are set aside and matter is restored to the file of the Id CIT(A) for afresh adjudication of appeals along with appeals of Sh. Naman Madan after allowing due opportunity of hearing to the assessee and without being influenced with the earlier first appellate orders.*

*10. In the result, the appeals of the revenue are allowed for statistical purposes.”*

11. Therefore, following the decision of co-ordinate Bench, issue in this appeal is also restored to the file of Ld.CIT(A) to decide it afresh. Ground raised by the assessee is accordingly, allowed for statistical purposes.

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

**ITA No.2816/Del/2022 [Assessment Year : 2017-18]**

13. Now, we take up the appeal of the assessee in the Assessment Year 2017-18 in ITA No.2816/Del/2022. The assessee has raised following grounds of appeal:-

1. *“That the order of Ld. Commissioner (Appeals) is contrary to the law and the facts of the present case.*
2. *That order of the Ld. Commissioner (Appeals) is contrary to the law and the facts of the case, and bad in law as Ld. Commissioner (appeals) confirmed penalty imposed by the AO of Rs.17,71,260/- u/s 271AAB(1)(c) .*
3. *The appellant craves leave to add to or amend the aforesaid grounds before disposal of the appeal.”*

14. The present appeal filed by the assessee is against the sustaining of penalty levied by AO u/s 271AAB of the Act.

15. We have heard Ld. Authorized Representatives of the parties and perused the material available on record and gone through the orders of the authorities below. It is brought to our notice that the Revenue has challenged the order of Ld.CIT(A) in quantum proceedings and the Co-ordinate Bench of the Tribunal

in ITA Nos.1828 & 1829/Del/2020 for the AYs 2016-17 & 2017-18 was pleased to set aside the order of the Ld.CIT(A). Since the quantum appeal has already been restored to the file of Ld.CIT(A), issue in this appeal are also set aside and the grounds are restored to the file of Ld.CIT(A) for adjudication afresh after giving due opportunity of bearing heard to the assessee. Grounds raised by the assessee are accordingly, allowed for statistical purposes.

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

17. In the final result, both appeals of the assessee in ITA Nos. 71/Del/2024 & 2816/Del/2022 for the AY 2017-18 are allowed for statistical purposes.

Order pronounced in the open Court on 10th June, 2024.

**Sd/-**  
**(M.BALAGANESH)**  
**ACCOUNTANT MEMBER**

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

*\* Amit Kumar \**

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT, NEW DELHI