

THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "SMC" BENCH

Before: Shri Ramit Kochar, Accountant Member

**ITA No. 395/Ahd/2024
Assessment Year 2014-15**

Jasudben Navinchandra Modi, C/O Jani and Company, A Block, 3 rd floor, Chinubhai Tower, Ashram Road, Ahmedabad-380009, Gujarat PAN: AFQPM2373F (Appellant)	v.	The Income Tax Officer, Ward-1(2)(3), Room No.A-103, 1 st Floor, Pratyakash Kar Bhawan, Ambawadi, Ahmedabad- 380015, Gujarat (Respondent)
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Assessee by: None
Revenue by: Shri M. Anand Kumar, Sr. D.R.

Date of hearing : 19-06-2024
Date of pronouncement : 19-06-2024

आदेश/ORDER

This appeal in ITA No. 395/Ahd/2024 for assessment year 2014-15 has been filed by the assessee before the Income Tax Appellate Tribunal, Ahmedabad Benches, Ahmedabad which has arisen from the appellate order dated 05.04.2022

vide Din & Order No. ITBA/NFAC/S/250/2022-23/1042518957(1) passed by learned Commissioner of Income-tax(Appeals), National Faceless Appeal (NFAC), Delhi, which in turn has arisen from the assessment order dated 10-12-2019 passed by the Assessing Officer u/s. 144 r.w.s. 147 of the Income-tax Act, 1961.

2. The brief facts of the case are that assessee had not filed return of income for assessment year 2014-15 u/s 139. As per information of NMS and generated through CIB/AIR details through ITD for assessment year 2014-15, the case of the assessee was reopened by Revenue for framing scrutiny assessment after obtaining necessary approval of the appropriate authorities, and reasons for reopening were recorded. Notice u/s. 148 was issued by AO on 15th March, 2019 which is claimed by the Assessing Officer to have been duly served upon the assessee through ITBA portal e-assessment proceedings and through speed post. The assessee in response to notice u/s. 148 did not file return of income. The statutory notice u/s. 142(1) was issued by AO but there was no response from the assessee. Show cause notice was also issued by the AO to the assessee on 02-11-2019 , which is reproduced as under:-

“During course of assessment proceedings for requirement of further details a notice u/s. 142(1) of the Act was issued to explain the source of investment of Rs. 13,00,000/- in Bonds of National High Authority of India and Rs. 13,00,000/- in bonds of Rural Electrification Corporation Ltd during the year under consideration. However, you have not submitted your explanation regarding source of investment in the Bonds/debentures. Further, you have earned interest

income of Rs.37,430/- during the year under consideration, however, the same was not disclosed as income. In absence of the details and also not filing return of the income for the year under consideration, it is not established that you have disclosed truly and correct income.

3 Accordingly, you are hereby show caused to explain as to why the investment of Rs.26,00,000/- in Bonds during the year under consideration should not be assessed as your total income u/s 69 of the Act as unexplained investment. Further, you are hereby show caused to explain as to why the interest income of Rs. 37,430/- earned during the year under consideration should not be added to your total income. Your reply/explanation should be submitted on or before 08.11.2019, failing which the assessment will be finalized on the basis of the materials available with the undersigned which may please be noted.”

The assessee did not file reply to the aforesaid show cause notice nor filed return of income. The Assessing Officer made the addition of income to the extent of Rs. 26 lakhs in the hands of the assessee towards unexplained investment in acquisition of debentures/bonds of NHAI/REC during the year under consideration u/s. 69 of the Act. Further, addition of interest income of Rs. 37,430/- was made by the Assessing Officer as the same was not offered to tax by the assessee, and hence the same was also added by the AO to the total income of the assessee as undisclosed interest income. The assessment was framed by the AO ex-parte u/s 144 r.w.s. 147 of the 1961 Act, dated 10.12.2019.

3. Aggrieved, assessee filed first appeal with learned CIT(A). who issued notice of hearing , as under:-

	Hearing Notice	Remarks
i)	Notice dated 18-03-2021	No compliance

	fixed for 13-04-2021	
ii)	Notice dated 09-12-2021 fixed for 20-12-2021	No compliance
iii)	Notice dated 29-12-2021 fixed for 03-01-2022	No compliance
iv)	Notice dated 12-01-2022 fixed for 21-01-2022	No compliance
v)	A final opportunity of being heard through notice dated 22-03-2022 fixed for 25-03-2022	No compliance

But, there was no compliance by the assessee to notices issued by the CIT(A). However, in grounds of appeal filed by the assessee before ld. CIT(A), the assessee has,inter-alia, stated that the notices were issued at old address and she has not invested Rs. 13,00,000/- in NHAI bonds nor invested Rs. 13,00,000/- in REC bonds. So far as interest income of Rs. 37,430/- is concerned, the assessee stated that the said interest income is her income but the same is below taxable limited. The ld. CIT(A) dismissed the appeal of the assessee ex-parte by holding as under:-

"5.1 I have gone through the facts of the case and assessment order passed by the AO. The AO on the basis of NMS details, noticed that the appellant had made investment of Rs. 13,00,000/- in bonds of National High Authority of India and Rs. 13,00,000/- in bonds of Rural Electrification Corporation Ltd. during the year under consideration. The AO recorded the reason to believe and after obtaining due approval u/s 151(2), issued

notice u/s 148 dated 15.03.2019 which was duly served on the appellant through ITBA Portal as well as speed post on the address mentioned in her PAN. The appellant was required to file return within 30 days of receipt of the notice. However, no compliance was made. No compliance was made to even subsequent issued notices. The appellant neither filed her return of income nor any information as asked through questionnaire was submitted. Since no compliance was made by the appellant, the AO was left with no alternative except to complete the assessment ex-parte u/s 144 of the Act. Therefore, in absence of any explanation/documentary evidences, the AO passed an ex-parte assessment order.

5.2 The appellant in grounds of appeal contested that she has not received any notice which was served on address i.e. Jasudaben Navinchandra Modi, 1086 Gudia's Pole, Relief Road Ahmedabad. But on perusal of the material on record, it is noticed that the assessment order which passed on 10.12.2019 also served on the same given address on 11.12.2019 which she herself mentioned in Form No.35. Further, the appellant has filed the appeal well within time after receiving the order. Therefore, the objection on servicing the notices on old address is not sustainable.

5.3 During the appellate proceedings, the appellant or his counsel has not made any written submission that how the AO erred in making the addition totalling to Rs.26,37,430/-. The onus is, therefore, upon the appellant to prove the genuineness of the transactions which has not been proved by the appellant through any evidence or material on record during the assessment as well as appellate proceedings. Therefore, the addition totalling to Rs.26,37,430/- made by the Assessing Officer is accordingly upheld. Thus, the action of the AO is confirmed and the grounds of appeal No.1 to 4 raised by the appellant are disallowed."

4. Aggrieved , the assessee filed second appeal with Tribunal. It is observed that the assessee has filed this appeal belatedly by 629 days , and application for condonation of delay is filed, which reads as under:-

"From:
Jasudben Navinchandra Modi
C/o. Jani and Co.
A Block, 3rd Floor,
Chinubhai Tower, Ashram Road,
Ahmedabad-380009

To,

Date: 20-01-2024

The Assistant Registrar,
The Income Tax Appellate Tribunal,
4th Floor, Abhinav Aracde,
Pritamnagar, Ellisbridge,
Ahmedabad- 380006.

Respected Sir,

Sub: Prayer to condone the delay in filing the appeal for A.Y. 2014-2015 P.A.No. AFQPM2373F

With reference to above, I beg to state as under:

I am a widow lady aged about 84 years residing in USA.

My husband, Navinchandrabhai Modi had sold a property during A.Y. 2014-2015 and the capital gain amount of Rs. 26,00,000 was invested in the Bonds under Section 54EC. I was a joint holder. Therefore, in the traces of the Department portal, the investment was also reflected under my name.

The AO had issued notice under Section 147 on the ground of escapement of income. This notice was not complied with since I stay in the USA and my husband also died around 2020. Subsequently, the ex-party order was passed and the appeal was filed before CIT(A) in time. However, the notices issued by CIT(A) were not complied with inadvertently since I am aged and stay in USA.

The CIT(A) also passed an ex-party order dated 05-04-2022, which I and my Consultant were not aware.

I have now received the penalty notice and therefore now my Consultant located the CIT(A) Order dated 05-04-2022.

In view of above, I could not file the appeal before your honours in time, I being an aged widow lady and residing in USA.

I request your honours to condone the delay in the interest of justice and admit the appeal.

Thanking you,

Yours faithfully,

Jasudben Navinchandra Modi

Sd/-”

In this application for condonation of delay filed by the assessee, the assessee has stated that she is widow lady aged 84 years residing in USA. It is stated that her husband Shri Navinchandrabahi Modi had sold property during the assessment year 2014-15, and capital gain of Rs. 26,00,000/- was invested by him in the bonds u/s. 54EC. It is stated that she was a joint holder of the Bonds, and based upon that the information captured from TRACES of the departmental portal, the investment was also reflected in her name. The case was re-opened by the Department by invoking provisions of Section 147 of the Act. The assessee stated that the assessee is staying in USA and her husband died in 2020. Ex-parte assessment order was passed by the Assessing Officer, but the appeal was filed before the ld. CIT(A) in time. It was stated that the notices issued by the CIT(A) were not complied with inadvertently as she is of old age and also she is staying in USA . It is stated that the ld. CIT(A) passed ex-prate order on 5th April, 2022 , of which she was not aware and her consultant was not also not aware of the order of ld. CIT(A). This is only when the penalty notice was received , and then consultant located the CIT(A) order dated 5th April, 2022 and then the assessee proceeded to file the appeal before the Tribunal. It is further averred that she being an old widow lady and staying in USA, the delay may be condoned in the interest of justice and the appeal be admitted. I have carefully gone

through the contents of the condonation application , orders of authorities below and also several other documents filed by the assessee by way of paper book containing 15 pages(placed on record in file) which are in the form of additional evidences etc(which I shall refer to in the succeeding para's of this order), I am of the considered view that there was no malafide on the part of the assessee in filing this appeal belatedly before the Tribunal beyond the time stipulated u/s 253(3) of the 1961 Act as the assessee is not going to gain anything by filing this appeal late with the Tribunal . I have also observed that the assessee prima-facie has a very strong case on merits, and she being an old aged widow lady of 84 years of age staying in USA has shown sufficient and reasonable cause in filing this appeal belatedly with ITAT, and infact she is suffering owing to the additions made by the department (of which of course she is equally responsible for her woes for not filing details/evidences before the authorities below). Hence keeping in view , the entire facts and circumstances and in the interest of justice and also keeping in view that the assessee is aged widow lady of 84 years living in USA and could be facing difficulties in filing the appeal having shown reasonable and sufficient cause for filing appeal belatedly , I condone the delay of 629 days in filing this appeal belatedly by the assessee before ITAT beyond the time stipulated u/s 253(3), and I proceed to adjudicate this appeal on merit. When

technicalities are pitted against the substantial justice, courts will lean towards advancement of substantial justice rather than technicalities. Reference is drawn to the decision of Hon'ble Supreme Court in the case of **Collector of Land Acquisition, Anantnag v. Mst. Katiji (1987 AIR 1353(SC))**. Thus, I admit this appeal and proceed to adjudicate this appeal on merit.

4a) When this appeal came up for hearing before me, none appeared on behalf of the assessee. However adjournment application is filed on behalf of the counsel for the assessee. The adjournment application is rejected and I proceed to adjudicate this appeal on merit in accordance with law. The ld. Departmental Representative submitted that the assessee has not filed the details/evidences before the authorities below and has not complied with the notices and hence ex-parte assessment order was passed by the Assessing Officer as well as by the CIT(A). A prayer was made to uphold the order of ld. CIT(A). On being confronted that the ld. CIT(A) has not complied with provisions of Section 250(6) and issues were not adjudicated on merits despite contentions raised in grounds of appeal before ld. CIT(A) raised by the assessee, the ld. Departmental Representative submitted that the ld. CIT(A) has passed an ex-parte order in-limine without discussing the issues on merit. The ld. Departmental Representative fairly

submitted that the matter can go back to the file of Id. CIT(A) for fresh adjudication.

5. I have considered the contention of the Id. Departmental Representative and perused the material on record including orders of authorities below and additional evidences filed by the assessee. I have observed that the additions to the income was made by the AO in the hands of the assessee , firstly of Rs. 26 lakhs in aggregate with respect to investments allegedly made by the assessee in the bonds of National Highway Authority Limited to the tune of Rs. 13 lakhs and in the bonds of Rural Electricity Corporation to the tune of Rs. 13 Lakhs. Further, addition of Rs. 37,430/- has been made on account of interest income .The assessee has admitted that interest income of Rs. 37,430/- is chargeable to tax in the hands of the assessee , but this income is below the taxable limit. The assessee in the grounds of appeal filed before the CIT(A) has stated that the investment of Rs. 26 lakhs in aggregate in the Bonds of NHAI/REC were made by her husband namely, Shri Navinchandra Chandulal Modi, and the assessee is only second account holder in the said bonds, while no investment was made by the assessee. It is also stated that the assessee has earned interest of Rs. 37,430/- and that income is below the taxable limit. I have also observed that the assessee has filed paper book containing 15 pages by way of additional evidences before ITAT, in which the assessee has

demonstrated that the investments in aggregate of of Rs. 26 lacs were made by assessee's husband as a first account holder in NHAI/REC Bonds , while the assessee is second account holder. The assessee has also submitted the death certificate of her husband wherein her husband died in the state of Chicago, Illinois in USA on 9th July, 2020. The assessee has also submitted Form 26AS for the impugned assessment in the case of the husband of the assessee in which investments in aggregate of Rs. 26 lacs in the bonds of NHAI and REC Ltd. are reflected. The assessee filed computation of income of husband of the assessee who was born on 25th May, 1937 i.e. Senior Citizen of the age of 75 years during the impugned assessment year, and he has claimed exemption u/s. 54EC with respect to investment of Rs. 26 lacs made in aggregate in the bonds of NHAI and REC Ltd. The assessee has filed bank statements of Bank of India in which the assessee is second account holder in two bank accounts with Bank of India of which first account holder is her husband Navinchandra Chandulal Modi (Bank account numbers 201310100010119 and 202810100008177), and the payment of Rs. 13 lacs in the bonds of NHAI and Rs. 13 lacs in REC bonds were reflected of having been made on 29.03.2014. The assessee has also filed her form 26AS for the impugned assessment year where in the same investment of Rs. 26 lakhs in the bonds of NHAI and REC Ltd. are reflected. The

assessee has claimed that her husband Mr. Navinchandra Chandulal Modi sold Property at Guni's PO for Rs. 35 lacs and long term capital gains were declared by him to the department , wherein the assessee has filed computation of income of the husband of the assessee for the impugned assessment (No ITR copy of the husband is filed for the impugned assessment year), wherein she has claimed that her husband has declared long term capital gain on sale of property at Guni's PO and that her husband invested the sale proceed of the property in the bonds of NHAI and REC Ltd aggregating to Rs. 26 lacs which is also reflected in the bank statements filed by the assessee . This investment of Rs. 26 lacs in the bonds of REC/NHAI were added by the Assessing Officer in the hands of the assessee as the income of the assessee, of which the assessee is claiming that she is merely second account holder in the aforesaid bonds and no investments were made by her, and her husband has offered for tax long term capital gains on sale of the property and her husband claimed exemption u/s 54EC by investing in Bonds of NHAI/REC in aggregate to the tune of Rs. 26 lacs. Thus, based on the documents filed before the ITAT by way of additional evidences (PB containing 15 pages which is placed on record in file) , I am of the view that the assessee has a prima facie good case and assessee being an old aged widow lady of 84 years is suffering (of which of course she is equally

responsible for her woes by not filing documents/details/evidences before the authorities below). However, it is also true that the assessee has not complied with the notices issued by the Assessing Officer as well as CIT(A). These paper books which are filed by the assessee for the first time before the Tribunal are additional evidences which have not stood the scrutiny/test of verification by the authorities below, and the claim set up by the assessee requires verification by authorities below. Thus, further, I have observed that the ld. CIT(A) has dismissed the appeal of the assessee ex-parte in-limine without making any further inquiry/verification, and has simply confirmed the assessment order of the Assessing Officer by holding that no details/documents are filed by the assessee, which is not in consonance with the provisions of section 250(6). The ld. CIT(A) ought to have considered the ground no. 4 raised by the assessee that the said investment was made by the husband of the assessee and not by the assessee and the assessee was merely the second account holder, and then adjudicated the appeal on merits by making such inquiries/verification considered appropriate by ld. CIT(A). The ld. CIT(A) has not given his independent reasoning while dismissing the appeal of the assessee. I have observed that the ld. CIT(A) has passed appellate order without deciding the issues on merit. The power of ld. CIT(A) are co-terminus with the power of Assessing Officer which even includes power

of enhancement(Section 251(1)(a)). The ld. CIT(A) is required to adjudicate the issues on merit in accordance with law , as is provided u/s. 250(6). The ld. CIT(A) has to state point for determination, his reasons for decision and the decision thereof as provided u/s 250(6). The assessee has claimed that she is merely joint holder with her husband in the investment in aggregate of Rs. 26 lacs made by the assessee' husband in NHAI/REC bonds, while no investments were made by the assessee. It is not un-common in India that wife's name is added by the husbands in the assets/property, in order to secure the future of the wife in case of any contingency such as death , indisposition etc. of husband. The CIT(A) has power to make such inquiries as he thinks fit and may also direct AO to make such enquiries and report to ld CIT(A), as is provided u/s 250(4). The CIT(A) could have issued summons u/s. 131 to the assessee or could have called for information from third parties u/s. 133(6) , in case there is non-compliance on the part of the assessee. There are other powers vested with ld. CIT(A) as is provided under the 1961 Act. The ld. CIT(A) has not rebutted the claim of the assessee, but dismissed the appeal of the assessee on ground of non filing of documents/details by the assessee. The ld. CIT(A) is required and obligated to pass order in compliance with the provisions of section 250(6), as ld CIT(A) is required to pass reasoned order on merits in accordance with law. The appellate order

passed by ld. CIT(A) is subject to further appeal with ITAT u/s 253. The appellate order passed by ITAT is subject to further appeal before Hon'ble High Court u/s 260A. The judgment and order passed by Hon'ble High Court is also subject to challenge before Hon'ble Supreme Court. Thus, the appellate order passed by ld. CIT(A) is not a final order, as it is subject to challenge before higher appellate authority. Thus, Reasons which weighed in the minds of the adjudicating authority while adjudicating appeal on merits of the issue are cardinal as the higher appellate authority can then adjudicate appeal on the issues arising in appeal before them, based on decision and reasoning of ld. CIT(A) in deciding the issues. If the ld. CIT(A) simply dismiss the appeal merely because the assessee did not appear before ld. CIT(A) or did not comply with the notices in limine without adjudicating issues arising in the appeal on merits , such order is not sustainable in the eyes of law keeping in view provisions of Section 250(6) , and also higher appellate authorities will be deprived to see what weighed in the mind of the ld. CIT(A) while adjudicating appeal as it will be an order passed without reasoning on the issues on merits . In the present case, it is observed that ld. CIT(A) has dismissed the appeal of the assessee ex-parte without deciding the issues arising in the appeal before him on merits, and hence the appellate order of the CIT(A) is clearly in violation of section 250(6) of the Act and liable to be set aside.

Merely stating the assessment order passed by AO is upheld , and that the assessee has not submitted details/documents is not sufficient . The ld. CIT(A) is not toothless as his powers are co-terminus with the powers of the AO. He could have made enquiries himself or have caused enquiries to be made by the AO and submit remand report to him to enable ld. CIT(A) to adjudicate the appeal(Section 250(4). There are other vast powers vested under the 1961 Act with ld. CIT(A). It is equally true that the assessee also did not complied with the notices issued by ld. CIT(A) and did not file the requisite details/documents to support his contentions. Under these circumstances and fairness of both the parties, in the interest of justice, the appellate order of CIT(A) is set aside and the matter can go back to the file of ld. CIT(A) for fresh adjudication of the appeal of the assessee on merit in accordance with law after giving opportunities to both the parties. The ld. CIT(A) shall pass speaking and reasoned order in compliance with the provision of section 250(6) of the Act on merit in accordance with law, in set aside proceedings ,after giving opportunity to both the parties in compliance with principles of natural justice. The assessee on his part is also directed to comply with the direction/notices of CIT(A) , and in case of failure of the assessee, the ld. CIT(A) shall be free to pass such order as deemed fit ex-parte in accordance with law on merits and after complying with the provisions of section

250(6) of the Act. Thus, the appeal of the assessee is allowed for statistical purposes and the matter is restored back to the file of Id. CIT(A) for fresh adjudication of the appeal of the assessee on merit in accordance with law. Since, the assessee is an old aged widow lady of 84 years living in USA, and prima facie strong case is set up by the assessee by filing additional evidences before ITAT which of course requires verification by authorities below, I direct Id. CIT(A) to expeditiously adjudicate the appeal of the assessee preferably within six months from the date of service of this order. I clarify that I have not commented on the merits of the issues in the appeal. Thus, the appeal of the assessee is allowed for statistical purposes. I order accordingly.

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

Order pronounced in the open court on 19-06-2024
at the conclusion of the hearing and reduced to writing and
signed on 20.06.2024

Sd/-
(RAMIT KOCHAR)
ACCOUNTANT MEMBER

Ahmedabad : Dated 20/06/2024

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)

5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद