

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, MUMBAI

**BEFORE MS. KAVITHA RAJAGOPAL, JM AND
SHRI GIRISH AGRAWAL, AM**

ITA No. 801/Mum/2024
(Assessment Year: 2017-18)

Mrs. Radhika Anup Ramuka 604, Orian-C-Vasant Galaxy, Bangur Nagar, Goregaon (W) Mumbai-400 090	Vs.	ITO, Ward 41(4)(3) Kautilya Bhavan, Bandra Kurla Complex, Bandra (E), Mumbai-400 051
PAN/GIR No. AFCPG 3577 R		
(Assessee)	:	(Respondent)
Assessee by	:	Shri Akash Kumar
Respondent by	:	Smt. Mahita Nair
Date of Hearing	:	18.06.2024
Date of Pronouncement	:	28.06.2024

ORDER

Per Kavitha Rajagopal, J M:

This appeal has been filed by the assessee, challenging the *ex parte* order of the learned Commissioner of Income Tax (Appeals) ('Id.CIT(A) for short), National Faceless Appeal Centre ('NFAC' for short) passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2017-18.

2. The assessee has raised the following grounds of the appeal :

The following grounds of appeal are independent of, and without prejudice to, one another -

1. The Commissioner of Income-tax (Appeals) at the National Faceless Appeal Centre (hereinafter referred to as the CIT(A)-NFAC) erred in framing an ex-parte order.

The appellant contends that on the facts and in the circumstances of the case and in law the CIT(A)-NFAC ought not to have framed an ex parte order.

2. The CIT(A)-NFAC erred in not deciding the following grounds of appeal on merit -

"The following grounds of appeal are independent of, and without prejudice to, one another-

1. The Officer at the Assessment Unit, Income-tax Department (hereafter referred to as the Assessing Officer) erred in determining the total income at Rs 69,11,946 as against Rs 12,91,840 per return of income, and consequently raising a demand for Rs 75,55,543, including interest of Rs 32,16,067 and Rs 5,652 charged under sections 234B and 234C of the Act, respectively.

The appellant contends that the Assessing Officer ought to have accepted the income of Rs.12,91,840 per return of income for the reasons more specifically mentioned in grounds of appeal no 4. 2. The Assessing Officer erred in issuing notice under section 148 of the Act on 25.07.2022 pursuant to order passed under section 148A(d) purporting to be pursuant to the directions of the Supreme Court in the case of Ashish Agarwal and Ors.

The appellant contends that on the facts and in the circumstances of the case and in law, the issue of notice under section 148 is without jurisdiction and hence, the consequent assessment order needs to be quashed.

The appellant further, contends that on the facts and in the circumstances of the case and in law, the case of the appellant does not fall within the realm of the said decision of the Supreme Court inasmuch as the said decision would apply only to cases "which were the subject matter of writ petitions before the various High Courts" and only to notices issued

3. The brief facts are that the assessee is an individual and had filed her return of income on 28.06.2017, declaring total income at Rs.12,91,840/-. The Id. Assessing Officer ('A.O.' for short) issued a notice on 10.06.2021 u/s.148 of the Act and then issued a letter dated 24.05.2022 pursuant to the order of Hon'ble Supreme Court in the case of *Ashish Agarwal and others* and provided the assessee with the information as required u/s. 148A(b) of the Act. The Id. A.O. completed the assessment by passing an assessment order u/s. 147 r.w.s. 144B of the Act on 25.05.2023 declaring the total income of the assessee at Rs.69,11,946/- after making an addition of Rs.56,20,106/- u/s. 68 of the Act, as unexplained credit on account of the capital gains earned on sale of shares of Yamini Investment Company Limited.

4. The assessee was in appeal before the first appellate authority, challenging the assessment order.

5. The Id. CIT(A) vide order dated 18.01.2024, upheld the order of the Id.A.O. for the reason that inspite of several opportunity the assessee has failed to substantiate her claim.
6. The assessee is in appeal before us, challenging the impugned order of the Id. CIT(A).
7. We have heard the rival submissions and perused the materials available on record. It is observed that the assessee has challenged the additions made by the Id. A.O. before the first appellate authority but has been non compliant throughout the appellate proceeding.
8. The learned Authorised Representative ('Id. AR' for short) for the assessee contended that the assessee has got a good case on the merits and prayed that the assessee may be given one more opportunity to present her case before the Id. CIT(A).
9. The learned Departmental Representative ('Id.DR' for short) vehemently opposed to setting aside the issue to the file of the Id. CIT(A) for the reason that the assessee was given several opportunity by the Id. CIT(A) which was not availed by the assessee.
10. On the above factual matrix of the case, we are of the considered view that the assessee may be given one more opportunity to present her case before the first appellate authority by adhering to the principles of natural justice. We, therefore, remand all these issues back to the file of the Id. CIT(A) for *de novo* adjudication. The assessee is directed to comply with the proceedings without any undue delay on her side.

11. In the result, the appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court on 28.06.2024

Sd/-

(Girish Agrawal)
Accountant Member

Mumbai; Dated : 28.06.2024
Roshani, Sr. PS

Sd/-

(Kavitha Rajagopal)
Judicial Member

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT - concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai