

IN THE INCOME TAX APPELLATE TRIBUNAL
Mumbai "B" Bench, Mumbai.

Before Shri B.R. BASKARAN (AM) & Shri RAJ KUMAR CHAUHAN (JM)

I.T.A. No. 2264/Mum/2024 (A.Y. 2016-17)

Niyati Sutaria james 302, Parimal Premises, 17 th Road, Khar West, Mumbai-400052. PAN : AAACD3816C (Appellant)	Vs.	ITO, Ward-23(2)(1) Piramal Chambers, Parel, Mumbai- 400012. (Respondent)
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Assessee by	Shri Nitesh Joshi
Department by	Shri Ashok Kumar Ambastha
Date of Hearing	02.07.2024
Date of Pronouncement	04.07.2024

ORDER

Per B.R.BASKARAN (AM) :-

The assessee has filed appeal challenging the order dated 08-04-2024 passed by Ld CIT(A), NFAC, Delhi and it relates to the assessment year 2016-17. The assessee is aggrieved by the decision of Ld CIT(A) in dismissing the appeal of the assessee in limine on the reasoning that the assessee did not pay advance tax, which is a mandatory condition for admitting the appeal in terms of sec. 249(4)(b) of the Act.

2. The assessee herein is a house wife and voluntary social worker. She did not file her return of income for the year under consideration, since she did not have taxable income. The assessing officer (AO) received information that the assessee has purchased an immovable property for a sum of Rs.1,31,34,333/- during the financial year relevant to AY 2016-17. Since the assessee has not filed any return of income and consequently the sources of purchase of above said investment was not explained, the AO reopened the

assessment by issuing notice u/s 148 of the Act on 14.3.2023. The assessee did not comply to the same and also with various other notices issued by the AO. Hence the AO completed the assessment u/s 144 of the Act to the best of his judgement assessing the above said amount of Rs.1,31,34,333/- as unexplained investment u/s 69 of the Act.

3. In the appellate proceedings before Ld CIT(A), the first appellate authority dismissed the appeal in limine on the reasoning that the assessee did not pay advance tax, which is a mandatory condition for admitting the appeal in terms of sec. 249(4)(b) of the Act. Aggrieved, the assessee has filed this appeal.

4. We heard the parties and perused the record. We notice that the impugned assessment is a case of reassessment. The liability to pay advance tax is required to be determined vis-à-vis the original return of income, i.e., the assessee should estimate his income and pay advance tax. It is the submission of the assessee that she did not have taxable income in the year under consideration and hence there was no liability to pay advance tax in terms of sec. 209 of the Act. Accordingly, it was submitted that the provisions of sec.249(4)(b) is not applicable to the assessee. Further, we notice that the co-ordinate bench has held in the case of M/s Nine Globe Industries P Ltd vs. ACIT (ITA No.3889/Mum/2023 dated 16-04-2024) that the question of paying advance tax in a reassessment proceedings will not arise. In view of the foregoing discussions, we are of the view that the Ld CIT(A) was not justified in dismissing the appeal of the assessee in limine.

5. On merits of the addition, the Ld A.R submitted that the entire investment in the immovable property has been made by the husband of the assessee. He submitted that the entire purchase consideration has flown from the bank accounts of assessee's husband only. It is stated that the assessee's name was included in the conveyance deed for giving her a security, which is the usual practice followed by the general public in our

Country. Accordingly, the Ld A.R submitted that the impugned addition could not have been made in the hands of the assessee, since the assessee has not made any investment. He further submitted that the assessee may be given one opportunity to present the correct facts before the Tribunal.

6. When questioned as to why the assessee did not appear before the AO, the Ld A.R submitted that the assessee had last filed her return of income some six years back and at that point of time, the e-mail id of then representative was given. He submitted that the AO has issued notices to that e-mail id (parish.mehta@gmail.com) and hence the assessee was not aware of the notices issued by the AO. He submitted that the record available in the portal of income tax department contains e-mail id of assessee/her husband, (mjames@in.loreal.com; shibanis2000@yahoo.com) but the AO had inadvertently omitted to notice it.

7. We heard Ld D.R and perused the record. It is the submission of Ld A.R that the entire investment in the immovable property has been made by the husband of the assessee and the same has been disclosed in his return of income. The assessee has also given valid reason for not responding to the notices issued by the AO. Hence, prima facie, there appears that the impugned addition may be liable to be deleted, provided the assessee satisfies the AO on the above said submission. Even though the Ld CIT(A) has dismissed the appeal in limine, considering the facts of the present case, we are of the view that the issue contested before us may be restored to the file of the AO, as it requires factual verification. Further, the same will avoid multiplicity of proceedings.

8. Accordingly, we set aside the order passed by Ld CIT(A) and restore all the issues to the file of the AO for examining it afresh. The AO may issue notices to the correct e-mail id of the assessee and further the assessee is also directed to co-operate with the AO for expeditious completion of assessment.

9. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 04/07/2024

Sd/-
(RAJ KUMAR CHAUHAN)
JUDICIAL MEMBER

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

Mumbai.; Dated : 04/07/2024

Vijay Pal Singh, (Sr. PS)

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai.
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai