

**| आयकर अपीलीय अधिकरण न्यायपीठ, मुंबई |**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"D" BENCH, MUMBAI**

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, HON'BLE JUDICIAL MEMBER**  
**&**  
**SHRI GIRISH AGRAWAL, HON'BLE ACCOUNTANT MEMBER**

**I.T.A. No. 232/Mum/2024**  
**Assessment Year: 2012-13**

<b>Mani D Seervai, Mumbai</b> C/o Kalyaniwalla & Mistry LLP 2 <sup>nd</sup> Floor, Esplanade House 29, Hazarimal Somani Marg Fort Maharashtra - 400001 [PAN: ALKPS2232F]	Vs	<b>Income Tax Officer, Ward-34(2)(4), Mumbai</b>
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<b>अपीलार्थी/ (Appellant)</b>		<b>प्रत्यर्थी/ (Respondent)</b>
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Assessee by :	Shri M.M. Golvala & Ms. Aruna Aiyar, A/Rs
Revenue by :	Smt. Mahita Nair, Sr. D/R

सुनवाई की तारीख/Date of Hearing : 11/06/2024  
घोषणा की तारीख /Date of Pronouncement: 31/07/2024

**आदेश/ORDER**

**PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is against the order of National Faceless Appeal Centre/CIT(A), vide order no. ITBA/NFAC/S/250/2023-24/1059181765(1), dated 29.12.2023 passed against the assessment order by the Income-tax Officer-34(2)(4), Mumbai, u/s. 143(3) r.w.s. 147 of the Income-tax Act (hereinafter referred to as the "Act"), dated 25.12.2019 for Assessment Year 2011-12.

2. Assessee has raised as many as 19 grounds in the present appeal out of which Ground Nos. 1 to 15 are related to legal issues relevant to assessment proceedings undertaken by invoking Section 147 and passing the impugned assessment order u/s 144 of the Act. Ground Nos. 16 to 18

are on the merits of the case relating to the additions made by AO u/s 69 of the Act. Ground No. 19 is in respect of levy of interest u/s 234B of the Act, which is consequential in nature.

2.1. Since the moot point is on invocation of assessment proceedings u/s 147 of the Act, we refer to the reasons to believe recorded by the Id. AO before issuing notice u/s 148 of the Act. Copy of reasons to believe are placed at pages 3 & 4 of the paper book. A perusal of the same reveals that Id. AO noted that name of the assessee falls under the non-filer monitoring system (NMS). Absence of filing of income tax return was verified from the e-filing site whereby Id. AO determined that assessee was a non-filer for AY 2012-13. According to him, ITS & itaxnet database, reflected various transactions done by assessee during the year which do not justify the fact of not filing of return for the year. Thus, on the basis of investigation, findings, analysis of the information available with him from various sources, he formed the reason to believe that income of more than Rs.1,00,000/- had escaped assessment. It is thus observed that the sole basis for taking up the proceedings u/s 147 was non-filing of return by the assessee for AY 2012-13.

3. In this respect, Id. Counsel for the assessee at the outset referred to the acknowledgement ITR-V and computation of income for return form filed in ITR-2, whereby the return for AY 2012-13, was filed manually before the Centralised Processing Centre of the Income Tax Department, Mumbai, with acknowledgement no. 10218287 on 30/07/2012. Assessee had reported total income of Rs.2,42,865/-, claiming a refund of Rs.5,455/- in the said return. Scanned copy of the said acknowledgement ITR-V is reproduced below for ready reference:-

ITR - 2

9819502610. 12-29

## ITR - V ACKNOWLEDGEMENT

Received with thanks from \_\_\_\_\_ a return of Income in ITR No. 01 (SAHAJ) 02 03 04 4S (SUGAM) 05 06 for assessment year 2012-13, having the following particulars

**A1** FIRST NAME: SEEKRAI **A2** MIDDLE NAME: MONI

**A3** LAST NAME: D **A4** PERMANENT ACCOUNT NUMBER: ALKPS2232F

**A5** SEX:  Male  Female **A6** DATE OF BIRTH: 07/11/1929 **A7** INCOME TAX WARD/CIRCLE: \_\_\_\_\_

**A8** FLAT/DOOR/BUILDING: 04, Laxmi MADOL **A9** ROAD/STREET: OFF. TURNER ROAD

**A10** AREA/LOCALITY: PANDRA (N) **A11** TOWN/CITY/DISTRICT: MUMBAI -

**A12** STATE: MAHARASHTRA **A13** PINCODE: 400050

**A14** Fill only one:  Filed  Before due date-139(1)  After due date-139(4)  Receipt of Return-139(5) OR in response to notice  142(1)  148  153AH59C

### COMPUTATION OF INCOME AND TAX RETURN Whole-Rupee (₹) only

<b>B1</b> Gross Total Income	₹	2,42,865
<b>B2</b> Deductions under Chapter VI-A	₹	0
<b>B3</b> Total Income	₹	2,42,865
<b>B4</b> Current Loss If any	₹	0
<b>B5</b> Net Tax Payable	₹	0
<b>B6</b> Interest Payable	₹	0
<b>B7</b> Total Tax and Interest Payable	₹	0
<b>B8</b> Total Advance Tax Paid	₹	0
<b>B9</b> Total Self Assessment Tax Paid	₹	0
<b>B10</b> Total TDS Deducted	₹	15,455
<b>B11</b> Total TCS Deducted	₹	0
<b>B12</b> Total Prepaid Taxes (B8+B9+B10+B11)	₹	15,455
<b>B13</b> Tax Payable (B7-B12, If B7>B12)	₹	0
<b>B14</b> Refund (B12-B7, If B12>B7)	₹	15,455

FOR OFFICIAL USE ONLY

**CENTRALISED PROCESSING CENTRE**

**10218287 300712**

**INCOME TAX DEPARTMENT, MUMBAI**

*Kalyanwala & Mistry LLP.*

29, Hazarimal Somani Marg, Fort, Mumbai - 400 001.

TAX PRINT, 177, Perin Nariman (Bazargate) Street, Fort, Mumbai - 400 001. Phone: 4347 0909, 4269 3022, 4269 3876

4. Ld. Counsel for assessee, thus, vehemently argued that, the allegation that the return of income was not filed by the assessee is wholly erroneous. Assessee is a regular filer of tax returns. He placed on record acknowledgements of return filed for AY 2010-11, 2011-12 and 2013-14 also, to corroborate the same. According to him, electronic filing of returns for individuals commenced from AY 2012-13 and onwards if the income exceeded Rs.10 Lakhs. For this, he referred to Notification No. S.O.626(E), dated 28/03/2012 issued by the CBDT. He then referred to the press release issued by the Press Information Bureau on 02/07/2012 referring to the said notification. The content of the said press release is extracted below:-

*“Central Board of Direct Taxes (CBDT) has issued a notification S.O. 626(E) dated 28th March 2012 vide which e-Filing has been made compulsory for Assessment Year 2012-13 onwards for*

- an individual or a Hindu undivided family, if his or its total income, or the total income in respect of which he is or it is assessable under the Act during the previous year, exceeds ten lakh rupees; and*
- an individual or a Hindu Undivided Family (HUF), being a resident, having assets (including financial interest in any entity) located outside India or signing authority in any account located outside India and required to furnish the return in Form ITR-2 or ITR-3 or ITR-4.*

*However, digital signature will not be mandatory for these taxpayers and they can also transmit the data the return electronically and thereafter submit the verification of the return in Form ITR-V. in Filing of returns electronically under digital signatures is already mandatory for any company required to furnish the return in Form ITR-6 or a firm required to furnish the return in Form ITR-5 or an individual or HUF required to furnish the return in Form ITR-4 and to whom provisions of section 44AB are applicable.*

*The Income Tax Department has received a record number of 1.64 crore income tax returns electronically in the year 2011-12. E-filing is an easy, fast and secure method of filing of income tax return. The electronically filed returns are processed at the Centralized Processing Centre, Bengaluru (Karnataka). The processing for e-filed return is faster and taxpayers get their refunds, if due, quickly The Department also provides some value added services like tracking of refunds, viewing tax credit status (Form 26AS), c-mail and SMS alerts regarding status of processing and refunds to taxpayers who e-file their returns.”*

5. Ld. Counsel for assessee, thus pointed out that in the given case for AY 2012-13, the total income of the assessee is Rs.2,42,865/- i.e., below

Rs. 10 Lakhs and, therefore, there was no mandatory requirement of filing the return electronically. The return was in fact filed physically which is on record duly acknowledged under the seal of the Department.

5.1. Further, Id. Counsel for assessee referred to the order of the Id. CIT(A), whereby the appeal has been dismissed as infructuous, since assessee had not filed the return of income and as well as not paid the amount equal to the amount of advance tax which was payable by her. In this respect, it was submitted that total income of the assessee was below the basic exemption limit and, therefore, there was no tax payable by her. Also, assessee had filed the return of income physically as evidently demonstrated and, therefore, the dismissal of the appeal on this set of facts by holding it as infructuous is grossly incorrect and not in accordance with the provisions of law.

5.2. Ld. Counsel referred to the decision of the Hon'ble High Court of Karnataka in the case of *T. Govidappa Setty vs. P. Vishwanatha Shetty, J.* reported in [1998] 231 ITR 892 (Kar.) which dealt with the provisions contained u/s 249(4)(a) of the Act, relating to forms of appeals and limitations. In this case also, assessee had filed the return and disputed the liability to be assessed as HUF and pay the tax liability imposed on him. Hon'ble Court held that, the view of the authorities below that the appeal filed by the assessee could not be admitted since he had failed to pay the tax due on income shown by him in the return filed by him, was erroneous in law.

5.3. Ld. Counsel for assessee also referred to the decisions of Hon'ble Delhi High Court in the case of *Deepak Wadhwa vs. ACIT* reported in 435 ITR 699 (Delhi)(HC) and that of Hon'ble Gujarat High Court in the case of *Bharatkumar Nihalchand Shah vs. ACIT* reported in 434 ITR 621 (Guj)(HC) and further that of the Co-ordinate Bench of ITAT Jaipur in the case of *Satish Kumar Khandelwal vs. ITO [2021] 127 taxamann.com 683*, to submit that where very reason for reopening assessment that assessee had not filed return of income was incorrect and Assessing Officer had reopened assessment without ascertaining whether assessee had filed return or not, reopening of assessment was not valid and was to be quashed and set aside.

5.4. According to him, in the present set of facts it is undisputed that the assessee had filed her return, though physically, with total income below the basic exemption limit, claiming a refund of Rs.5,455/-. Thus, the view taken by ld. CIT(A) in dismissing the appeal as infructuous is not in accordance with the provisions of Section 249(4)(a) of the Act and hence liable to be set aside.

6. Per contra, ld. Sr. D/R, accepted the fact that the assessee had filed the return of income. However, no submissions were made in the assessment proceedings and, therefore, additions made are justified.

7. On the merits of the case, ld. Counsel for assessee, evidently demonstrated the source of investments made by assessee from the documentary evidence placed on record in the paper book. However, since we are dealing with the legal issues first, we refer to the submissions made on this aspect before going into the merits of the case. We take note of the fact that assessee had filed the return of income physically, which is not controverted by ld. Sr.D/R. She did not meet the

criteria to file a return electronically and hence ld. AO was grossly incorrect in noting that assessee's case is the case of a non-filer, despite very categorically noting in the reasons to believe that he has made all the investigations and examination in the reasons to believe recorded to take up the proceedings u/s 147 of the Act. We also take note of the fact that assessee is regularly filing the return of income for both the preceding and subsequent assessment years. From the reasons recorded, it can be noted that notice u/s 148 of the Act was issued solely on the basis of an assessee being a non-filer of her return of income for the year under consideration and the transactions undertaken during the year have escaped assessment. As we have noted above, there is a clear contradiction on the part of the ld. AO to hold that assessee has not filed her return is when the records before us manifestly demonstrate the contrary and is undisputed.

7.1. In the context of proceedings taken up u/s 147 r.w.s 148 of the Act, we note that while the law does not require AO to form a definite opinion by conducting any detailed investigation regarding escapement of income in the assessment but it certainly does require him to form a *prima facie* opinion based on tangible material which provides a nexus or link to arrive at reasons to believe that income has escaped assessment. In the present case, ld. AO has grossly failed in his examination to take note of the fact that the return was physically filed by the assessee which would have provided the nexus or link to form a *prima facie* opinion that income of the assessee had escaped assessment for the year under consideration.

7.2. Thus, in absence of this necessary nexus between the tangible material and formation of belief, the re-assessment proceedings cannot be

sustained. We thus, hold that the reopening of assessment is not valid and the same is hereby quashed. Since we have quashed the reopening proceedings, therefore, the grounds dealing with the merits of the case are rendered merely academic in nature and hence not adjudicated.

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

**Order pronounced in the Court on 31 July, 2024 at Mumbai.**

*Sd/-*  
**(NARENDER KUMAR CHOUDHRY)**  
**JUDICIAL MEMBER**

*Sd/-*  
**(GIRISH AGRAWAL)**  
**ACCOUNTANT MEMBER**

Mumbai, Dated 31/07/2024

*Sd/-*

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, मुंबई /DR,ITAT, Mumbai,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,  
TRUE COPY

Assistant Registrar  
आयकर अपीलीय अधिकरण  
ITAT, Mumbai