

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "J(SMC)", MUMBAI

**BEFORE SHRI BR BASKARAN, ACCOUNTANT MEMBER AND
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A No.2667/Mum/2024
(Assessment Year : 2011-12)**

Shama Shamim Gubitra D-803, Dhiraj Apartment Opp Oshiwara Bus Depot New Link Road, Goregaon (West), Mumbai PAN : ATTPG5653P	vs	Commissioner of Income-tax (Appeals), Piramal Chamber, Lalbaug, Parel, Mumbai-400 012
APPELLANT		RESPONDENT

Assessee by : None
Respondent by : Shri Pravin M Chavan (CIT DR)

Date of hearing : 31/07/2024
Date of pronouncement : 02/ 08/2024

ORDER

PER ANIKESH BANERJEE, J.M:

The instant appeal of the assessee was filed against the order of the National Faceless Appeal Centre, Delhi [for brevity, 'Ld.CIT(A)'] passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), for Assessment Year 2011-12, date of order 14.03.2024. The impugned order was emanated from the order of the Id. Income-tax Officer 23(3)(3), Mumbai (in short, 'the A.O.')

passed under section 143(3) read with section 147 of the Act, date of order 24/12/2018.

2. The assessee has taken the following grounds of appeal:-

"1. SUMMARY OF THE CASE ASSESSEE:

SHAMA SHAMIM GUBITRA / PAN: ATTPG5653P Order u/s 250 of the Income tax Act,

1961 Assessment Year: 2011-2012 1.1, MRS.SHAMA SHAMIM GUBITRA, born in Bangalore

in 1971, currently aged 52, reside in Mumbai,Maharashtra. I entered into marriage with MR.

SHAMIM GUBITRA, on 06th January, 1991,when I was 19 years and 8 months old. It'snoteworthy that prior to our marriage, MR.SHAMIM GUBITRA was wedded to his first wife,

MRS. ZAHIDA SHAMIM GUBITRA, on 15thSeptember, 1990. According to the Muslim ,

Personal Law Application Act (Shariat) of 1937,our marriage holds legal standing,

i. My husbandand I were blessed with three children: two sonsand one daughter:

1. MR. SALMAN SHAMIMGUBITRA: Born on 08/02/1992 (Education: MBAin Finance) 2. MS. TAHOOR SHAMIM GUBITRA: (Daughter) - Born on 14/04/1997 (Education: Psychologist) 3. MR. BILAL SHAMIM GUBITRA-Born on 05/12/1998 __ (Education: Graduated inB. Com)

2. Additionally, my husband, Mr. Shamim Gubitra, and his first wife, Mrs. Zahida,

have three children as well: two sons and one daughter: 1. AWAIS SHAMIM GUBITRA: - Born on 10/06/1992 2. HIJAB SHAMTM GUBITRA: (Daughter) - Born on 27/03/1994 3. TMAD SHAMTM GUBITRA: -Born on 16/04/1999 II. My

husband, MR.SHAMIM GUBITRA, has faced legal repercussions resulting in

imprisonment in the following cases: Case I: Case Number-2400587/1996 This case was initiated on 21/05/1996, leading to his arrest on the same date. He was

released from police custody on 20/08/1996, and the case concluded on 08/11/2021. Case II Case Number- 2401061/2008 Another -legal issue arose on

03/06/2005, leading to hisarrest on that date. This case was resolved on07/11/2019 in Metropolitan, Borivali, Mumbai.

3. III. The persistent legal battles have significantlyimpacted our family's financial stability. Thecontinuous drain on resources due to legalproceedings has

led to a substantial decrease in ourfamily income. As a result, we have encounteredsignificant financial hardships, struggling to meetour daily expenses

and provide for the educationalneeds of our children. IV. During my husband's

legal troubles, I took on the responsibility of raising our children for a period of 3-5 years, during which we had to significantly reduce their educational expenses. We managed to sustain ourselves and our children by utilizing the savings we had accumulated over the years and supplementing it with income from temporary sources up until March, 2001. This challenging period required us to tighten our budget and make do with limited resources to ensure the well-being of our family.

4. *V. As my children grew older, I faced the challenge of ensuring their access to quality education and other essential amenities. Faced with this pressing need, I found myself emotionally compelled to seek employment and generate income. At that time, my son Salman was 9 years old, Tahoor was 4 years old, and Bilal was 3 years old. It became imperative for me to find suitable employment to support my family's needs, particularly to ensure that my children did not suffer from a lack of educational opportunities. VI. In the earlier years, I faced restrictions that prevented me from seeking employment outside the home. Consequently, in 2001, I initiated a tiffin making service as a means to address our family's basic needs and generate income. This endeavour allowed me to earn money to cover our daily expenses while working from home.*

5. *VII. Initially, I operated my tiffin service from home, catering to approximately 12-13 customers in nearby areas. The monthly income from providing vegetarian meals ranged from 500-1000 rupees per customer. However, realizing the need for additional income to meet our growing needs, I learned tailoring and engaged in clothing activities alongside my food service. VIII. Over the years, my small business flourished, and I expanded my tiffin service to cater to around 20-30 vegetarian tiffin's and 30-35 non-vegetarian tiffin's per month. This increase in clientele allowed me to meet our monthly expenses and even save a portion for emergencies and my children's future education.*

IX. Despite the success of my business, I incurred yearly expenses amounting to 30-35% of my income to sustain and grow my revenue. As all transactions were conducted in cash, I did not operate a bank account, managing all income and savings in cash form.

6. *X. In 2005, when my son Salruan reached the age of 13-14, he began assisting me with food deliveries, which further boosted our business scope and income. With the help of my children, particularly Salman, we were able to*

overcome financial challenges. By 2005, I had managed to save a considerable amount from my business income, providing a safety net for our family's financial stability. XI. Over time, we actively sought ways to boost our income, exploring various supplementary activities. After a few years, Salman began offering both vegetarian and non-vegetarian tiffin's, delivering them on a bicycle, thereby gradually expanding our income opportunities. XII. The revenue generated from our tiffin and clothing services effectively covered our children's educational expenses. As they grew older, I diligently saved any surplus income to secure their future.

7. XIII. Moreover, to sustain and grow our business, I made necessary investments totaling between 1,50,000 to 2,00,000 rupees each year in essentials such as clothing materials and food products. XIV. By the year 2010-2011, Salman, then around 18 year's old, was nearing adulthood. Recognizing the need to prepare for his future, I began setting aside funds for his marriage expenses and to ensure his well-being in his married life. Additionally, with the aim of securing a better living situation for my family, I decided to separate from our joint family, with whom we had resided until 2010.

However, due to financial constraints, I was unable to afford property investments at prevailing rates.

Consequently, I reached out to my brothers for assistance in acquiring a separate house.

8 XV. Out of the love and care of my eight brothers, each generously contributed towards purchasing a new property. XVI. Upon exploring various properties in the Goregaon to Andheri area, where rates ranged between INR 32,00,000 to 45,00,000, I found myself in need of additional funds. In 2010, to bridge this gap, I sold approximately 1 kilograms of gold jewelry gifted to me during my marriage by my parents and relatives. At the prevailing rate of around INR 1850 per gram, this yielded approximately INR 27,00,000. XVII. With these I combined funds, I proceeded to purchase a residential flat located at Dheeraj Residency Co-Operative Housing Society Limited, Flat No. 803, 8th Floor. Oshiwara Bus Depot, New Link Road, Goregaon (West), Mumbai - 400104.

9 XVIII. After completing all registration formalities and paying the required stamp duty, I successfully purchased the property and took possession on 27th October 2010. XIX. I want to emphasize that all the funds used for this purchase

were accumulated over ' the past 10 years through my small businesses, savings, and gold investments. None of the funds were acquired through loans; they represent the result of my hard work and dedication. XX. Operating primarily in cash transactions due to a lack of digital knowledge, my business has been managed solely by me and my children. Unfortunately, this meant that formal accounting or digital records were not maintained. However, I have attached the purchase agreement of the property along with my income tax filings from 29th October 2018, including computations and acknowledgements, to provide evidence of my income sources and the legitimacy of the property purchase.

10 XXI, As all my income was received in cash, and prior to the Financial Year 2010-2011. each year's. income fell below the taxable income threshold. Additionally, due to a lack of understanding regarding income tax regulations, I did not file any income tax returns for the income earned before the Financial Year 2010-2011. XXII. I received a notice under section 148 after 2-3 months from the issuance date. The reason cited was that I was not registered with the e-filing income tax portal, which prevented me from submitting any online reply within the stipulated 30-day period."

3. The brief fact of the case is that the assessee had purchased immovable property amounting to Rs.36 lakhs. The case was reopened under section 147 and the notice was issued under section 148 of the Act. In response to the said notice, the assessee filed the return under section 148 of the Act. During the assessment proceedings, the assessee was unable to explain the source for investment of immovable property amount to Rs.36 lakhs. The entire amount was added under section 69 of the Act with the total income of the assessee. Aggrieved, the assessee filed an appeal before the Id. CIT(A). But Id. CIT(A) had issued the notices for hearing, but all are remained non-complied. Finally, the Id. CIT(A) passed an order *ex parte* by upholding the assessment order. Being aggrieved on the appeal order, the assessee filed an appeal before us.

4. When the appeal was called for hearing, none was present on behalf of the assessee. No adjournment petition was filed. Considering the merit of the case, we proceed to dispose of the appeal exparte qua for assessee after hearing the Ld.DR.

5. We heard the Ld.DR and considered the orders of the revenue authorities. The Ld.DR first pointed out that the assessee has not appeared after several notices issued by the Ld.CIT(A). The appeal order was passed exparte. The relevant paragraph 4.2 is duly reproduced as below: -

"4.2 In this case notice of hearing u/s 250 of Income-tax ACT 1961 was issued for hearing as under: -

<i>Date of sending hearing notice</i>	<i>Hearing date fixed</i>	<i>DIN</i>	<i>Remarks</i>
<i>29/01/2021</i>	<i>15/02/2021</i>	<i>ITBA/NFAC/F/APL-1/2020-21/1030189403(1)</i>	<i>Noncompliance</i>
<i>20/02/2024</i>	<i>27/02/2024</i>	<i>ITBA/NFAC/F/APL-1/2023-24/1051185282(1)</i>	<i>Noncompliance</i>
<i>04/03/2024</i>	<i>11/03/2024</i>	<i>ITBA/NFAC/F/APL-2023-24/106193943(1)</i>	<i>Noncompliance</i>

The appellant has been given three opportunities in past to substantiate his Grounds of Appeal and Statement of facts. None of the occasion, the appellant submitted any response. There is no gainsaying that once the appeal is filed by the appellant, it is obligatory en 'is part to purposefully and co-operatively pursue- the same in a worthwhile manner, which the appellant has evidently failed to do.

During this appeal proceeding the appellant has not complied to any of the notices as stated above and also has not submitted any details/document/evidence in support of his ground of appeals.”

6. The Ld.CIT(A) has passed the order without considering the merit of the case and the assessee was unable to submit its documents in favour of its claim. In the ground of appeal, the assessee has mentioned that the assessee has accumulated the funds for last 12 years and the same funds were invested for purchase of immovable property. In our considered view, the matter should be remanded back to the file of the Ld.CIT(A) for further adjudication of the issue. We are not expressing our opinion on the merit of the case which will impair the set aside appeal proceedings. Needless to say, the assessee should get a reasonable opportunity of hearing in set aside proceedings. On the other hand, the assessee should be diligent and cooperative in appeal proceeding for quick disposal of appeal.

7. In the result, the **ITA No.2667/Mum/2024** is allowed for statistical purpose.

Order pronounced in the open court on 02nd day of August, 2024.

Sd/-

(BR BASKARAN)
ACCOUNTANT MEMBER
Mumbai, दिनांक/Dated: 02/08/2024
Pavanan

sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकरआयुक्त CIT
4. विभागीयप्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
5. गार्डफाइल/Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar), ITAT, Mumbai