

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH: BANGALORE**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

ITA No.1370/Bang/2024
Assessment Year: 2018-19

Smt. Prameela Parameshwar Shettigar 4-153/1/2/5, Near Kondana Swara Someshwara, Mangalore 575 022. PAN NO : DIBPS6480J	Vs.	ITO Ward-2(1), Mangalore.
APPELLANT		RESPONDENT

Appellant by	:	Ms. Sunaiana Bhatia, A.R.
Respondent by	:	Sri Ganesh R. Ghale, Standing counsel for department

Date of Hearing	:	19.08.2024
Date of Pronouncement	:	22.08.2024

O R D E R

PER YOGESH KUMAR U.S. JUDICIAL MEMBER:

This appeal by assessee is directed against order of NFAC for the assessment year 2018-19 dated 21.2.2024. The assessee raised various grounds of appeal.

2. There is a delay of 89 days in filing the appeal before this Tribunal. The ld. A.R. filed an affidavit of the assessee explaining the reason for delay that assessee was pursuing the remedy by filing application u/s 154 of the Act on 10/04/2024 which was dismissed on 15.07.2024 by the NFAC. Later, assessee took steps to file present appeal which was actually filed on 19.07.2024. Therefore submitted that the delay in filing the appeal may be condoned.

3. The Ld.DR submitted that the reason assigned in the affidavit for condoning the delay is not sufficient cause as there was no embargo to the assessee to file the appeal on time, thus, the ld.DR sought for dismissal of the appeal on delay in latches.

4. We have carefully gone through the reasons advanced by the assessee and in our opinion, there was a good and sufficient reason in filing the appeal belatedly before this Tribunal. Accordingly, we condone the delay of 89 days in filing the appeal before this Tribunal and admit the appeal for adjudication.

5. Brief facts of the case are that as per the information received from National e-Assessment Centre, Delhi, the assessee had bought an immovable property from Shri Madhava Gatti for sale consideration of Rs. 45 Lakhs on 07/10/2017. Based on the copy of the Form 61A forwarded by the National e-Assessment Centre and after perusal of e-filing portal, it is found that the assessee has not filed her return of income for the said assessment year 2018-19 disclosing the said transactions. A notice u/s. 148 was issued for which assessee has replied by disputing the sale consideration value of Rs. 45 Lakhs and claimed that assessee has purchased a residential property for a consideration of Rs. 31 Lakhs and provided the source of the bank loan for the sale consideration. The assessment order came to be passed by making an addition of Rs. 14 Lakhs (45 Lakhs – 31 Lakhs=14 Lakhs) by treating the same as unexplained u/s. 69A of the act r.w.s. 115BBE of the act.

6. Aggrieved by the assessment order dated 16/03/2023, the assessee preferred an appeal before the Ld.CIT(A). The Ld.CIT(A) vide order dated 21/02/2024, dismissed the appeal by invoking the provisions of section 249(4) of the Act without even admitting the same on the ground that the assessee has not filed the return of income as well as not paid an amount equal to the amount of advance tax which was payable by the assessee.

7. As against the order of the Ld.CIT(A) dated 16/03/2023, the assessee is before us on following grounds:

“1. The orders of the authorities below in so far as they are against the appellant are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.

2. The learned Commissioner of Income tax [Appeals] erred in dismissing the appeal holding that the appellant has not paid the amount equal to advance tax as required u/s. 249[4] of the Act and hence, the appeal filed cannot be admitted without appreciating that the provisions of section 249[4] of the Act have no application at all under the facts and in the circumstances of the appellant's case.

3. The order of re-assessment is bad in law and void-ab-initio for want of requisite jurisdiction especially, the mandatory requirements to assume jurisdiction u/s 148 of the Act did not exist and have not been complied with and consequently, the re-assessment requires to be cancelled.

4. The learned CIT[A] is not justified in sustaining the addition of Rs. 14,00,000/- made as unexplained money U/s 69A rws 115BBE of the Act under the facts and in the circumstances of the appellant's case.

5. The learned CIT[A] ought to have appreciated that the provisions of Section 69A of the Act is not attracted under the facts and in the circumstances of the appellant's case.

6. The learned CIT[A] is not justified in upholding the tax imposed under the provisions of section 115BBE under the facts and in the circumstances of the appellant's case.

7. Without prejudice to the right to seek waiver with the Hon'ble CCIT/DG, the appellant denies herself liable to be charged to interest u/s. 234B of the Act, which under the facts and in the circumstances of the appellant's case and the same deserves to be cancelled.

8. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs.”

8. The Ld.Counsel for the assessee submitted that the very basis for initiating the assessment proceedings is based on wrong information. The information sent by the National e-Assessment Centre, Delhi which is the sale transaction for sale consideration of Rs. 45 Lakhs dated 07/10/2017, is nowhere connected to the assessee (placed at pages 63-75 of P.B.). On the other hand, the actual transaction of purchase of property on 06/10/2017 for Rs. 31 Lakhs (placed at pages 20 to 31 of the paper book). It was further submitted that when the assessee has disputed the entire addition itself and the tax liability payable by the assessee, the question of paying advance tax does not arise. The Ld.Counsel further submitted that the initiation of assessment proceedings itself is illegal and the assessee was put to great hardship due to high handed action of the department. Therefore sought for allowing the appeal.

9. Per contra, the ld.DR submitted that as per section 249(4) of the act, the assessee shall pay advance tax, failing which the appeal before the Ld.CIT(A) deserves to be dismissed as not admissible and further the assessee has not utilized the proviso to section 249(4) by making an application from exempt her from the operation of the provision of the said clause. Therefore the appeal of the assessee is devoid of merit thus sought for dismissal of the appeal.

10. We have heard the parties and perused the material available on record. The ld.AO has made addition of Rs. 14 Lakhs u/s. 69A

of the act. The assessee filed an appeal before the Id.CIT(A) challenging the entire sum of Rs. 14 Lakhs. It was the case of the assessee that the document on which the assessment proceedings initiated itself is based on the wrong information and challenged the entire addition and claimed that assessee is not liable to pay any advance tax by disputing the entire addition. Without the said addition, assessee's income does not exceed maximum amount and is not chargeable to tax thus there is no liability to pay any advance tax. Since the assessee has alleged that her income is not chargeable for tax, there cannot be any obligation upon the assessee to pay the advance tax, therefore in our opinion invoking the provision of section 249(4) of the act by the Id.CIT(A) is erroneous. Since the Tribunal being a final fact finding authority and considering the fact that the assessee has advanced the argument on the merit of the case as well, we have gone through the material produced by the assessee. It is found that the Id.AO based on the information received from National e-Assessment Centre, Delhi initiated proceedings u/s. 148 of the act wherein an information has been provided that the 'assessee had bought an immovable property from Shri Madhava Gatti for sale consideration of Rs.45,00,000/- on 07/10/2017' which was the sole basis for the initiation of the proceedings. The Ld.AR has produced the said information at page No. 63 followed by the sale deed of the parties thereon. As per the said document, the sale deed has been executed by Mr. B.N. Radhakrishna Rao and Mr. U. Ramdas Achar in favour of Mr. Nedle Rama Bhat for sale consideration of Rs. 45 Lakhs in respect of the property bearing survey no. 65/2A1P1 measuring 11 cents situated at Kavoor village, Mangalore Taluk, wherein the assessee is neither the purchaser nor the vendor. On the other hand, the assessee has produced her sale deed at page No. 20 which depicts that Mr. Madhava Gatti has sold a property bearing R.S. No. 189/2A measuring 0-05.75 acres situated at

Page 6 of 6

Kotekar Village, Mangalore Taluk for a sale consideration of 31 Lakhs (pages 20-31 of the paper book). Thus it is crystal clear that the Ld.AO made addition on the basis of wrong assumption of facts observing that assessee has made purchase of property for Rs. 45 Lakhs, contrary to the fact that the assessee had purchased the property for Rs. 31 lakhs. Apart from the same, assessee has also produced the source for the said transaction which being a loan availed from Vijaya Bank, Mangalore. Thus the basis for making the addition itself does not survive. Considering the above facts and circumstances of the case, we are inclined to delete the addition made by the Ld.AO of Rs. 14 Lakhs u/s. 69A of the act. Ordered accordingly.

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

Order pronounced in the open court on 22nd Aug, 2024

Sd/-
(Waseem Ahmed)
Accountant Member

Sd/-
(Yogesh Kumar U.S.)
Judicial Member

Bangalore,
Dated 22nd Aug, 2024.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5. Guard file

By order

Asst. Registrar,
ITAT, Bangalore.