

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"G" BENCH, MUMBAI**

**SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER  
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No.1643/MUM/2024  
(Assessment Year: 2010-11)**

**Harshadha Yashvant Gawade  
(Legal Heir of Late Sh.Yashwant Soma Gawade)**

B/104, first floor, Sair Radha Complex  
CHS limited, near Asian Paint, LBS Marg,  
Bhandup, Mumbai - 400078  
[PAN: AHZPG3179J]

..... **Appellant**

**Income Tax Officer,  
Ward 28(3)(5) Mumbai,**  
Railway Station Building  
Navi Mumbai-400703.

Vs

..... **Respondent**

**Appearance**

For the Appellant/Assessee : Sh. Firoz B Andhyarujina, Sr. Advocate  
along with Sh. Sanjay H Pawar  
For the Respondent/Department : Mrs. Beena Santosh

**Date**

Conclusion of hearing : 25.06.2024  
Pronouncement of order : 30.08.2024

---

**ORDER**

**Per Rahul Chaudhary, Judicial Member:**

1. By way of the present appeal the Assessee has challenged the order, dated 02/03/2023, passed by the National Faceless Appeal Centre (NFAC), Delhi, [hereinafter referred to as the '**CIT(A)**'] for the Assessment Year 2010-11, whereby the Ld. CIT(A) had dismissed the appeal against the Assessment Order, dated 20/12/2017, passed under Section 144 read with Section 147 of the Income Tax Act, 1961 (hereinafter referred to as 'the **Act**').
2. The appellant has raised following grounds of appeal :  
"1. *On the facts and in the circumstances of the case and also in law,*

*the ex-party Order under section 144 r/w Section 147 deserves to be set aside and based on principle of natural justice the matter be restored to the file of AO for fresh adjudication.*

2. *On the facts and in the circumstances of the case and also in law, It is true that the assessee did not respond before lower authority due to circumstances beyond control -*

- i) The appellant was Non-Resident.*
- ii) The email sent was not received and hence appellant was unaware.*
- iii) The appellant was serious in pursuing the matter and therefore file appeal to CIT(A).*
- iv) The appellant thereafter could not pursue as he died on 1/01/2020.*
- v) The widow who was residing in the USA was not aware and there no communication with CA.*
- vi) It was only in February 2024 that the Widow came to be aware order passed by CIT(A) dated 2/3/2023*

*Due to aforesaid reasons beyond the control, there is a gross vic of the principle of natural justice and the opportunity should be to represent fact before the lower authority.*

2.2 *Suitable Order and direction be issued to take the Widow Ms. Heir of Yashvant Gawade as legal heir entitled to undertake the proceeding*

3. *In any event the Order of CIT(A) is bad and vitiated in law as the order is in the name of Yashvant Soma Gawade who is dead and expired on (death certificate attached). Hence no order can be passed against a dead person, without Prejudice and alternative Grounds.*

4.1 *On the facts and in the circumstances of the case and also in law, the learned Assessing Officer as well a Commissioner of Income-tax (Appeals) erred in law making addition of Rs.38,70,000/- being cost of flat purchase as Income chargeable to tax as there is ample evidence to establish that the money was remitted from*

*abroad and loan taken from SBI to meet the cost of Flat.*

4.2 *On the facts and in the circumstances of the case and also in law, the learned Assessing Officer as well as Commissioner of Income-tax (Appeals) ignored the fact that assessee was working in USA and therefore his income is not liable to tax in India and made addition to his total income without considering residential status of the assessee and source of income for investment in property.*

5 *The appellant craves leave to add, to alter and to amend the above grounds of appeal."*

3. When the appeal was taken up for hearing the Learned Senior Counsel at the outset pointed out that the present appeal has been filed after a delay of around one year. Explaining the reasons for delay, the Learned Senior Counsel provided following factual background. The Assessee was employed with Cognizant Technology Solutions US Corporation since 2008 and had purchased an immovable property in India during the previous year relevant to the Assessment Year 2010-11 for total consideration of INR 38,70,000/- from own funds remitted to India and from loan taken from State Bank of India. Since the Assessee did not file return of income for the relevant assessment year, reassessment proceedings were initiated under Section 147 of the Act. Since short period of time was granted to the Assessee to respond to show cause notice the Assessee failed to comply and furnish relevant details/information. Therefore, the Assessee was proceeded ex-parte and best judgment assessment was framed on the Assessee under Section 147 read with Section 144 of the Act vide order dated 31/03/2017 and entire amount of purchase consideration of INR 38,70,000/- was added in the hands of the Assessee as unexplained income for the Assessment Year 2010-11. Being aggrieved, the Assessee instituted appeal before the CIT(A) on 25/01/2018. However, during the pendency of the appeal the Assessee passed away on 01/01/2020 in USA

due to sudden cardiac arrest. Therefore, the appeal before the CIT(A) went unattended and was, therefore, dismissed by the CIT(A) vide order dated 02/03/2023. When the legal heir got knowledge on the aforesaid order of dismissal, she sought legal advice and took steps get the present appeal filed before the Tribunal. In view of the aforesaid, the Learned Senior Counsel submitted that the delay in filing the present appeal be condoned. He further submitted that the order passed by the CIT(A) has been passed in the name of the deceased Assessee and therefore, the same must be set aside. It was further submitted that since in the assessment proceedings the Assessee was proceeded ex-parte, it would be interest of justice to remand the issue back to issue to the file of the Assessing Officer. The Learned Senior Counsel invited out attention to the documents filed before us and submitted that the relevant documents have now been collated and the same would be sufficient to show to the satisfaction of the Assessing Officer that no addition was warranted in the present case.

4. The Learned Departmental Representative placed reliance on the order passed by the authorities below.
5. We have perused the order passed by the authorities below and examined the material on record which includes copy of employment records, earning statement issued by the employer, bank account statements and death certificate of the deceased Assessee as well as marriage certificate and copy of PAN Card of the Legal Heir/Appellant. The factual averments made on behalf of the Appellant are supported by affidavit. Therefore, keeping in view, the reasons given for delay in filing the present appeal, we condone the delay in filing the present appeal.
- 5.1. We are of the view that failure on the part of the Legal Heir to

pursue appeal before CIT(A) was on account of bonafide reasons. Further, we note that the CIT(A) has dismissed the appeal without returning any findings on merit and that the order passed by the CIT(A) is in the name of deceased Assessee. Accordingly, the order, dated 02/03/2023, passed by the CIT(A) is set aside.

- 5.2. On perusal of the Assessment Order we find that during the assessment proceedings sufficient time was not granted to the Assessee for presenting its case. The Assessee, at the relevant time, was residing outside India and not at the address in India where physical notices were sent. We note that vide notice, dated 07/12/2017, the hearing was fixed for 11/12/2017. Since the time was too short the same could not be attended to. Soon thereafter, order was passed on 20/12/2017 under Section 147 read with 144 of the Act since the case was getting time barred. A perusal of earning statements and bank account statements clearly show the source of funds utilized for purchasing immovable property. However, since the same was not available with the Assessing Officer, we deem it appropriate to set-aside the order dated 20/12/2017 passed by the Assessing Officer and restore the issue back to the file of Assessing Officer with the directions to decide the same afresh after taking into consideration the details and documents to be furnished by the Appellant. The Appellant is directed to place before the Assessing Officer all the relevant details and documents in support of the explanation/claim on receiving notice of hearing from the Assessing Officer. The Appellant is directed to be vigilant and track the assessment proceedings through the Income Tax Business Application (ITBA) Portal/online portal. The Appellant has provided Email Address as **sanjay.pawar@ajallp.in** the memorandum of appeal in Form No. 36 filed before the Tribunal. Therefore, Assessing Officer is directed to send all communication

to the aforesaid email address, in addition to the email address available on record.

6. In terms of paragraph 5 to 5.2 above, Ground No. 1 to 3 raised by the Appellant are allowed while Ground No. 4.1 & 4.2 are dismissed as being infructuous.
7. In result, the present appeal is treated as allowed for statistical purposes.

Order pronounced on 30.08.2024.

**Sd/-**  
**(Prashant Maharishi)**  
**Accountant Member**

**Sd/-**  
**(Rahul Chaudhary)**  
**Judicial Member**

मुंबई Mumbai; दिनांक Dated : 30.08.2024  
*Patil, Sr.P.S.*

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai