

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH “B”, MUMBAI  
BEFORE SHRI. AMARJIT SINGH, ACCOUNTANT MEMBER  
AND  
SHRI. RAJ KUMAR CHAUHAN, JUDICIAL MEMBER  
ITA NO. 1868/MUM/2024 (A.Y: 2012-13)**

Mansi Devang Shah Vs. Income Tax Officer Wd. –  
Sai Aashadeep Society A-1201, 26(2)(6)  
Sevaram Alwani Goshala Road, Aayakar Bhavan, Mumbai –  
Mulund West, Mumbai – 400080. 400020.

**PAN: ANLPP6022H**

**(Appellant)**

**(Respondent)**

**Assessee Represented by : None**  
**Department Represented by : Shri. Ashok Kumar**  
**Ambashta – SR. AR**  
**Date of conclusion of Hearing : 26.06.2024**  
**Date of Pronouncement : 24.09.2024**

**ORDER**

**PER RAJ KUMAR CHAUHAN (J.M.):**

1. This appeal is filed by the appellant/assessee against the order dated 29.02.2024 of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as the “CIT(A)”], passed under section 250 of the Income Tax Act, 1961 [hereinafter referred to as “the Act”] for the A.Y. 2012-13, wherein the



order of the Ld. AO making addition of Rs. 53,12,800/- alongwith penalty proceeding was confirmed.

2. The matter in brief is that the Appellant is an individual. The Case of the Appellant was reopened by issuance of Notice u/s. 148 based upon the information from Individual Transaction Statement (ITS) and AIR for A.Y.2012-13 regarding Purchase of Immovable Property of Rs.53,12,800/-. Appellant has purchased a property for a consideration of Rs.53,12,800 along with 3 other family members during A.Y.2012-13. The Appellant had made part payment for purchase of the said property and other 3 family members had made balance payment. The Appellant not being well versed with use of computers and internet and due to lack of professional guidance, did not file any response to the Notices issued by the Learned Assessing Officer and placed on the ITBA Portal. The Learned Assessing Officer passed the Assessment Order u/s 144 r.w.s. 147 of the Income Tax Act, 1961 making a total addition of Rs.53,12,800.
3. Aggrieved by the impugned order, the assessee is in appeal before us and has raised the following grounds in this appeal:
  1. *“In the facts and circumstances of the case and in law, the Learned Assessing Officer has erred in making addition of Rs.53,12,800 ignoring the fact that the Assessee is not the sole owner of the*



*Property and that 3 other family members are also the joint owners who had contributed towards purchase of property.*

2. *In the facts and circumstances of the case and in law, the Learned Assessing Officer has erred in making addition of Rs.53,12,800/- ignoring the fact that the Assessee has only made part payment for the purchase of property from her own funds and balance payment was made by other joint owners.*
  3. *Appellant pray to grant stay on recovery proceedings till the first appeal decided.*
  4. *The order appeal against is bad in Law and against the principle of natural justices and tax jurisprudence.*
  5. *The order appeal against is based on surmises and conjectures.”*
4. At the time of hearing, none appeared on behalf of the assessee. We have heard the Ld. DR on behalf of the revenue. It is evident from the ground that the impugned order has been passed without considering the facts that the assessee is not the only owner of the property purchased for Rs. 53,12,800/- as there are 3 other co-owners of the property who has jointly purchased it with the assessee. It is further alleged that because the assessee was not having any knowledge of internet, etc. and was not computer savvy and as such could not upload her reply to the notice issued by the Ld. AO on the website of income tax department and the Ld. AO has passed the ex-parte order making addition of Rs. 53,12,800/- as taxable income of the assessee only.



5. It is therefore evident from the above facts and circumstances that there is apparent illegality in the order, the Ld. CIT(A) who has wrongly upheld and confirmed the order of the Ld. AO without considering the fact that the assessee is not the only person who has purchased the alleged property and there are other 3 family members who are joint owner of the property and the assessee has only made the part payment. In these facts the matter needs to be restored to the Ld. AO and assessee be permitted to file their reply.
6. We have also heard the Ld. DR on behalf of the revenue who has submitted that sufficient opportunity was given by the Ld. AO to the assessee for filing reply to the notice issued to the assessee as assessee's case was reopened on sufficient reasons having being found and no reply or ITR was filed by the assessee after issuing of the notice by the Ld. AO.
7. It is therefore submitted that there is no illegality in the impugned order as well as in the AO's order and the appeal is devoid of merit and same be dismissed.
8. We have considered the submissions made on behalf of the revenue and perused the records. Para no. 5 of the AO's order is relevant and reproduced as under:



5. The law is well settled; that the onus of proving the source of a Investment made by the assessee is him. In the instant case inspite of giving various opportunities to the assessee, the assessee did not submit any details for the period under consideration. As per the AIR information the assessee appeared to have entered into immovable property transaction to the tune of Rs.53.12.800/- in the FY. 2011-12. The assessee was liable to file the Income Tax Return for F.Y. 2011-12 relevant to the A.Y. 2012-13. However, the assessee has neither furnished the return nor complied with the notice u/s. 142(1) of the I. T. Act. As such, the transaction under consideration remained unexplained at the end of the assessee. Therefore, the purchase value of the property of Rs.53.12,000/- is considered as income of the assessee being unexplained investment in the subject property under the head income from other sources. Penalty proceedings u/s. 271(1)(b) of the I.T. Act for failure to comply with notice and u/s. 271(1)(c) of Act for concealment of aforesaid income are herewith initiated. As the assessee has failed to file the return of income penalty proceedings u/s 271F of the Act are herewith initiated.”
9. It is thus evident from the order of the Ld. AO as extracted above that the same has been passed without any information furnished by the appellant to the Ld. AO with regard to the notice issued after reopening of the assessment.
10. The end of justice requires that no one should be condemned unheard. The explanation given by the assessee for not presenting her case before the Ld. AO, in the given facts and circumstances of the case, seems to be probable and justified.
11. The Ld. CIT(A) has also failed to consider the said aspect of the matter while confirming the order of the Ld. AO. The fact that the assessee is not



the sole purchaser as there are 3 other family member who are co-owners and has made the part payments, needs to be considered and adjudicated by the Ld. AO.

12. For these reasons, the impugned order as well as the assessment order is not legally sustainable and are accordingly set aside. The matter is restored to the file of the Ld. AO with the direction to decide the matter afresh after giving opportunity to the assessee for presenting her case. The assessee is directed to file reply/documents within 60 days from this order to the Ld. AO.

13. In the result, appeal filed by the assessee is allowed for statistical purposes.

**Order pronounced in the open court on 24.09.2024**

**Sd/-**  
**(AMARJIT SINGH)**  
**(ACCOUNTANT MEMBER)**

**Sd/-**  
**(RAJ KUMAR CHAUHAN)**  
**(JUDICIAL MEMBER)**

Mumbai / Dated 24.09.2024  
*Karishma J. Pawar, (Stenographer)*

**Copy of the Order forwarded to:**



**ITA No. 1868/Mum/2024**  
**Mansi Devang Shah; A.Y. 2012-13**

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)  
**ITAT, Mumbai**