

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

BEFORE SHRI R.K. PANDA, VICE PRESIDENT
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.389/PUN/2024
निर्धारण वर्ष / Assessment Year : 2018-19

Kala Arvind Jain, House No. 4-1-14, Near Gujarati School, Kharakuwa, Aurangabad – 431001 PAN : ACVPJ7940F	Vs.	Income Tax Officer, Ward –1(1), Aurangabad
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

Assessee by :	Shri S.N. Puranik
Department by :	Shri Ramnath P. Murkunde
Date of hearing :	19-08-2024
Date of Pronouncement :	21-10-2024

आदेश / ORDER

PER ASTHA CHANDRA, JM :

The appeal filed by the assessee is directed against the order dated 03.01.2024 of the Ld. Commissioner of Income Tax (Appeals)/NFAC, Delhi [**"CIT(A)"**] pertaining to Assessment Year (**"AY"**) 2018-19.

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

- “1. CIT(A) has erred in adding Rs.30,30,000/- as short Consideration / Long Term Capital Gain, as against Only Rs.20,000/ Appellant Prays for deletion of Addition of Rs.30,00,000/- which belongs to Co-Owner Mr. Shanki Jain
2. CIT(A) has erred in Confirming Assessing Officer's action of restricting the Deduction u/s 54F Rs.1,35,53,081/- as against Rs.2,71,06,162/- Claimed by Assessee. Appellant Prays for allowing not only Rs.2,71,06,162/-but also Proportionate Increase because of addition as per Ground No. 1, by CIT(A). Appellant prays for relief.
3. CIT(A) has erred in Confirming allegation allocation of Investment and Ownership in New Asset for the purpose of Sec 54F of IT Act (House Property Purchased as 50% as against, in the Ratio of Investment by Mrs. Kala Jain & Mr. Shanki Jain, in term of Sec. 45 of Transfer of Property Act.) Appellant prays for deduction as claimed.

4. *Assessee denies Liability to Interest u/s 234A, B and 234 C. Appellant prays for deletion of the Same.*
5. *Interest u/s 234A is nor attracted as Return is filed within extended Due date i.e. 31.08.2018. Appellant prays for cancellation of Interest Charged Rs.4,42,162.*
6. *Interest u/s 234B from 01.09.2018 upto March 2021 without giving credit for SA Tax paid on 31.08.2018. Interest is levied upto Date of Month of Assessment Order i.e. 30.03.2021.*
5. *CIT(A) is not Just and fair in making Addition/Disallowance of Deduction.*
6. *Appellant prays to add, alter, amend, take additional grounds, submit additional evidence, and/or withdraw the ground/s, during appellate Proceedings.”*

3. Briefly stated, the facts of the case are that the assessee is an individual. She filed her return of income for AY 2018-19 on 31.08.2018 declaring total income of Rs.49,30,166/-. The return of income was processed u/s 143(1) of the Income Tax Act, 1961 (**the “Act”**). Subsequently, the case was selected for limited scrutiny under CASS for the reasons; large deduction/exemption claimed u/s 11(1A), other than 11(1A), 54, 54B, 54C 54D, 54EC, 54EE, 54F, 54G, 54GA, 54GB, 115F, etc. Statutory notice(s) u/s 143(2) and 142(1) of the Act were issued from time to time calling for details regarding the consideration received on sale of land and claim of deduction u/s 54F of the Act amounting to Rs.2,71,06,162/-. The assessee submitted the requisite details online on 17.02.2021 including therein the sale deed with respect to sale of land by her and purchase deed with respect to claiming deduction u/s 54F of the Act.

3.1 During the assessment proceedings, the Ld. Assessing Officer (**“AO”**) noticed that the assessee has under reported sale consideration to the tune of Rs.30,20,000/- in her return of income and added the same to the total income of the assessee under the head Long Term Capital Gain.

3.2 As regards the claim of deduction u/s 54F of the Act, the Ld. AO noticed that the new property purchased by the assessee was co-owned by Shri Shanki Arvind Jain. The assessee has not provided the details to substantiate that she is the only owner of the new asset nor furnished details with respect to her eligibility of 100% claim of deduction u/s 54F of the Act. The assessee did not furnish bank transaction details with

respect to payment made towards purchase of the new property. The assessee has failed to prove that the deduction u/s 54F of the Act had not been claimed by the co-owner of the property. The Ld. AO therefore restricted the deduction claimed by the assessee u/s 54F of the Act to 50% of the total claim amounting to Rs.1,35,53,081/- (50% of Rs.2,71,06,162/-). Thereafter, a show cause notice dated 19.03.2021 was issued asking the assessee to explain as to why the assessment should not be completed as per draft assessment order calculating capital gain at Rs.2,07,95,394/-. The assessee failed to comply which led the Ld. AO presume that the assessee has nothing to explain regarding the proposed assessment. He, therefore, completed the assessment at total income of Rs.2,13,93,247/- by inter alia making addition of Rs.2,07,95,394/- on account of long term capital gain, vide order dated 30.03.2021 passed u/s 143(3) of the Act.

4. Aggrieved, the assessee carried the matter before the Ld. CIT(A)/NFAC challenging the addition made by the Ld. AO. The Ld. CIT(A)/NFAC electronically issued three notices of hearing dated 30.09.2021, 06.12.2023 and 14.12.2023 which remained unresponded. The Ld. CIT(A)/NFAC therefore concluded that the assessee is not interested in pursuing her appeal and proceeded to pass ex-parte order on account of failure on the part of the assessee in submitting the requisite details/documentary evidence to substantiate her case. On merits, the Ld. CIT(A)/NFAC endorsed the findings of the Ld. AO and confirmed the additions made by him in the absence of the supporting documentary evidences thereof.

5. Dissatisfied, the assessee is in appeal before the Tribunal and all the grounds of appeal relate thereto.

6. The Ld. AR submitted that there was no intentional non-compliance of the notice(s) issued by the Ld. CIT(A)/NFAC. The Ld. AR submitted that only three notice(s) one in September, 2021 and two notices in December, 2023 were issued to the assessee via e-mail/ITBA portal and hence the assessee was not provided adequate opportunity to present her case during the appellate proceedings before the Ld. CIT(A). He placed a sworn affidavit of Shanki Arvind Jain, son of the assessee, Smt. Kala Arvind Jain stating therein that it is his mobile number and e-mail id which is the primary

address on the portal of the assessee and also on her income tax return for AY 2018-19 and appeal filed before the Ld. CIT(A)/NFAC as his mother is illiterate in handling electronic media. Two notices dated 06.12.2023 and 14.12.2023 were uploaded on ITBA portal of her mother. However, he did not receive any message regarding these notices on his mobile and since he did not access the ITBA portal of his mother frequently, the said notices inadvertently remained un-complied by the assessee. Also, since the assessee does not access her e-mail, the notices were inadvertently not responded to. He brought to our notice that the Ld. CIT(A)/NFAC dismissed the appeal on merits in a summary manner only on the basis of observation of the Ld. AO given in the assessment order without himself going into the merits of the case. He submitted that given an opportunity the assessee is in a position to furnish all the requisite supporting documents/evidence to substantiate her case before the Ld. CIT(A)/NFAC. It was therefore urged by him that the matter may be sent back to the file of Ld. CIT(A)/NFAC for adjudication afresh on merits.

7. The Ld. DR had no objection to the above proposition of the Ld. AR.

8. We have heard the Ld. Representatives of the parties and perused the records. We find that three notices of hearing were issued electronically via ITBA portal/e-mail to the assessee which remained inaccessible by the assessee due to the reasons stated above by the Ld. AR. The Ld. CIT(A)/NFAC by an ex-parte order dated 03.01.2024 dismissed the appeal of the assessee in limine for non-prosecution of the appeal basis his presumption that the assessee chose not to avail the opportunity of hearings provided by him as she has no corroborative evidence or valid explanation to offer in support of the grounds of appeal agitated by her before him. In the absence of any supporting documentary evidence, the Ld. CIT(A)/NFAC confirmed the additions made by the Ld. AO. In our considered opinion, the assessee had reasonable and sufficient cause for non-compliance of notices due to the reasons stated above. We notice that the Ld. CIT(A)/NFAC has passed the impugned order ex-parte in concurrence with the order of Ld. AO without himself going into the merits of the case. Thus, in our view his order is in violation of the provisions of section 250(6) of the Act.

9. On the facts and in the circumstances of the case enumerated above, we deem it fit in the interest of justice and fair play to set aside the order of Ld. CIT(A)/NFAC and restore the matter back to his file to adjudicate the issue(s) raised by the assessee on merits afresh and pass speaking order on merit after allowing reasonable opportunity of being heard to the assessee who shall provide the requisite support in terms of submitting the relevant documents/evidence as may be required/called upon on the appointed date without seeking adjournment under any pretext, failing which the Ld. CIT(A)/NFAC shall be at liberty to pass appropriate order as per law. We order accordingly.

10. In the result, the appeal of assessee is allowed for statistical purpose.

Order pronounced in the open court on 21st October, 2024.

Sd/-
(R.K. Panda)
VICE PRESIDENT

Sd/-
(Astha Chandra)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 21st October, 2024.
रवि

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune