

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

**BEFORE SHRI. ANIKESH BANERJEE, JUDICIAL MEMBER AND
SMT. RENU JAUHRI, ACCOUNTANT MEMBER**

**I.T.A No.3734/Mum/2024
(Assessment Year: 2014-15)**

Mrs. Pinky Vipul Gandhi Flat No. 1904, 19 th Floor, D- Wing, Neelyog Towers, Dhanjiwadi Khotkuva, Malad East, Mumbai, Maharashtra, 400097 PAN: -ADZPG8201H	vs	The Income Tax Officer, Ward 41(3)(3), Mumbai Room No 716, 7th Floor, Kautilya Bhavan BKC Bandra East, Mumbai, Maharashtra, 400051
APPELLANT		RESPONDENT

Assessee by : Shri Ripple Shah, CA
Respondent by : Shri. Pravin Salunkhe, SR-DR

Date of hearing : 25/11/2024
Date of pronouncement : 26/11/2024

ORDER

PER ANIKESH BANERJEE, J.M:

Instant appeal of the assessee was filed against the order of the Learned 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 2014-15, date of order 14.05.2024. The impugned order was emanated from the order of the Ld. Income tax Officer, Ward-30(2)(5), Mumbai (in

brevity, 'the Ld.AO') passed under section 144 read with section 147 of the Act, date of order 06/12/2019.

2. The registry informed that the assessee filed the appeal with delay for 2days. The delay is explained by filing affidavit and medical certificate dated 24/07/2024. Accordingly, delay for 2days in filing of appeal before the ITAT is condoned. The matter is taken for adjudication.

3. The assessee has taken the following grounds: -

“GROUNDS OF APPEAL

The ground or grounds of appeal are without prejudice to one another.

1. Sub-clause (a) to (j) of point no 1 of grounds of appeals is summarized here:

Erroneous Addition of Rs 45,00,000/-on account of unexplained money u/s 69A by Ld. AO:

a) Based on the facts and in circumstances of the case and in the law, the learned AO failed to appraise the fact about the receipt of money amounting to Rs 45,00,000/- as a consideration towards sale of flat and thereby erred in making addition of the same amount as on account of unexplained money u/s 69A.

b) Based on the facts and in circumstances of the case and in the law, the learned AO failed to appraise the fact that there is no provision in the Income Tax Return (ITR) to disclose the purchase of immovable property and thereby erred in issuing notice u/s 148 on his consideration that the assessee failed to disclosed the purchase of immovable property.

c) Based on the facts and in circumstances of the case and in the law, the H'ble CIT (A) failed to appraise to understand the true color and nature of the transaction and accordingly failed to delete the addition u/s 69A and thereby erred in confirming the AO's Order on the grounds of non-submission at AO level.

d) Based on the facts and in circumstances of the case and in the law, the H'ble CIT (A) failed to appraise the facts that whenever there is any sale transaction corresponding purchase cost and incidental expenses are involved and thereby H'ble CIT(A) erred in passing an order dismissing the Appeal filed by the Appellant without considering the merits of the case. Thus, the Order passed by the CIT (A) is in gross violation of principles of natural justice and the appellant prays to set aside the said order and the case may be decided on merits.

2. Sub-clause (a) to (g) of point no 2, point no 3 and point no 4 of grounds of appeals are summarized here:

Failure to fairly estimate the income under the proper section and head while passing the Order u/s 144:

a) Based on the facts and in circumstances of the case and in the law, that the Ld. AO failed to adhere to the principles of natural justice by providing inadequate and insufficient opportunities to appellants and thereby adopted the route of best judgement.

b) Based on the facts and in circumstances of the case and in the law, the Ld. AO failed to appraise the fact that the route of best judgement requires to adopt fair and correct method and ways of estimating the income under the proper section and head, and erroneously made addition u/s 69A. and therefore, the Order passed u/s 144 by the Ld. AO suffered from serious infirmities, was bad in law and void-ab-intio.

c) Based on the facts and in circumstances of the case and in the law, even the H'ble CIT(A) failed to appraise the fact that the Ld. AO failed to adhere to the principles of natural justice by providing inadequate and insufficient opportunities to appellants and furthermore failed to appraise the fact that the Ld. AO failed to adopt fair ways to estimate the income and erroneously made addition u/s 69A and thus the Order passed u/s 144 by the Ld. AO suffered from serious infirmities, was bad in law and void-ab-intio. and ought to have quashed the said order

3. Sub-clause (a) to (d) of point no 3 and sub-clause (a) to (d) of point no 4 of grounds of appeals are summarized here: Inadequate and insufficient opportunities provided to appellants thereby failure to adhere to Principle of Natural Justice:

Based on the facts and in circumstances of the case and in the Law, the Ld. AO failed to provide sufficient and adequate opportunities to present her case and even the H'ble CIT(A) failed to appreciate this fact that the order u/s. 144 passed by the Ld. AO suffered from gross violation of principle of natural justice and as a result it was bad in law and void-ab-intio and failed to quash the said order.

4. Sub-clause (a) to (e) of point no 5 of grounds of appeals are summarized here:

Erroneous addition at gross amount of Rs 45,00,000/-:

Based on the facts and in circumstances of the case and in the law, Both the learned AO and H'ble CIT(A) failed to appraise the fact about the receipt of money amounting to Rs 45,00,000/- as a consideration towards sale of flat and therefore corresponding purchase cost and incidental expenses are involved which are supposed to be deducted to determine income from capital gain and thereby erred in making addition of the same amount as on account of unexplained money u/s 69A.

The Appellant craves leave to add, alter, amend or delete any or all of the above grounds."

4. We heard the rival submission and considered the documents available in record. In assessment and appeal both the proceedings were completed ex-parte. The assessee during the impugned assessment year invested for purchasing the property at Flat No 1904, 19th Floor, D-wing, Neelyog Tower, Dhanjiwadi, Malad (east), Mumbai-400097 amount to Rs. 45,00,000/-. In the assessment stage the assessee was remained uncompiled and unable to

submit the relevant evidence in pursuance of the notice under section 148 and under section 142(1) of the Act. The Id.AO had considered the investment in new property from undisclosed source and added back the amount of Rs. 45,00,000/- under section 69A of the Act.

5. The Id.AR for assessee filed a written submission which is kept in record (in short APB). The Id. AR stated that previously the property was purchased on dated 28/12/2012 at Flat No-1403, 14th Floor, D-wing, Neelyog Tower, Dhanjiwadi, Malad (East) Mumbai-400097. The said property was sold by an agreement dated 27/8/2013 with consideration amount to Rs. 45,00,000/-. The said sale consideration of the property was invested for purchasing new property by an agreement dated 25/11/2013. The source of investment for purchasing new flat is the sale consideration of the old flat. As the proof of evidence, the documents are annexed in **APB pages 95 to 258**. In 1st appeal proceeding the assessee was unable to comply the notices issued by the Id. CIT(A). So, without considering the merit of the case the appeal order was passed and the appeal of the assessee was dismissed.

6. The Id. AR raised legal grounds; however, the arguments were primarily focused on the factual aspects of the case. Ground No. 3, pressed by the Id. AR, pertains to the denial of a reasonable opportunity, resulting in a failure to adhere to the principles of natural justice. Upon examination, we find that the assessee was not afforded a reasonable opportunity to present evidence before the revenue authorities. Accordingly, we remand the matter to the file of the Id. AO for fresh adjudication *de novo*.

7. We observe that the source of investment was duly explained before the Bench, and the Id. DR raised no objections to the submissions made by the Id.

AR. We refrain from expressing any views on the merits of the case to avoid prejudicing the reassessment proceedings. Both parties have agreed to remand the matter to the file of the Id. AO. It is imperative that the Id. AO provides the assessee with a fair and adequate opportunity of being heard during the reassessment proceeding. Any evidence or explanation submitted by the assessee in her defence must be admitted and considered by the Id. AO, who shall adjudicate the matter on its merits in accordance with the law. Similarly, the assessee is expected to act diligently and cooperate fully during the reassessment proceedings.

8. Consequently, Ground No. 3 is adjudicated in favour of the assessee. The remaining grounds are left open and shall be decided by the appropriate forum.

9. In the result, the appeal of the assessee bearing **ITA No-3734/Mum/2024** is allowed.

Order pronounced in the open court on 26th day of November 2024.

Sd/-

(RENU JAUHRI)
ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated: 26/11/2024
Self

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