

IN THE INCOME TAX APPELLATE TRIBUNAL
JAIPUR BENCH "SMC", JAIPUR
**BEFORE Dr. S. SEETHALAKSHMI, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**
ITA No. 1161/JPR/2024 (A.Y.2010-11)

Sarla Bhargava,

SB-166, Gandhi Nagar,

Bapu Nagar, Jaipur 302 001.

PAN No.:ACGPB 5078B

..... Appellant

Vs.

ITO, Ward-6(4),

Jaipur – 302 001.

..... Respondent

Appellant by : Mr. Anoop Bhatia, CA, Ld. AR
Respondent by : Mr. Gautam Singh Choudhary, JCIT, Ld.
DR
Date of hearing : 09/12/2024
Date of pronouncement : 20/12/2024

ORDER

PER GAGAN GOYAL, A.M:

This appeal by assessee is directed against the order of NFAC, Delhidated 20.06.2024 passed u/s. 250 of the Income Tax Act, 1961 (in short 'the Act') for A.Y. 2010-11. The assessee has raised the following grounds of appeal:-

1 On facts and in circumstances of the case and in law Ld. CIT (A)-NFAC has grossly erred in confirming the action of Id. AO in completing re-assessment proceedings u/s 147 r.w.s 144 of the Income Tax Act, 1961 despite assessee has provided all the documents and evidences supporting her stand vide her letter

dated 21.05.2019 submitted to the Id. CIT (A). Therefore the appellate order so passed deserves to be quashed.

2. On the facts and circumstances of the case and in law Id. AO as well as id CIT (A) - NFAC both have erred in confirming addition of Rs. 17, 52,694/- u/s. 69 of the Income Tax Act, 1961 in the total income of the assessee despite assessee providing substantial proofs for source of relevant investments made by her. Such addition being invalid in law hence deserves to be quashed.

3. On facts and in circumstances of the case Id. AO as well as Ld. CIT (A) - NFAC both have grossly erred in confirming calculating total income of the assessee Rs. 17,52,694/- without considering the documents available on records.

4. On the facts and circumstances of the case Id. CIT (A) NFAC has also erred is confirming initiating penalty by Id. AO u/s. 271 & 271F of the Act.

5. That the appellant reserves the right to add/alter/ modify deleted any or all grounds at any time before the hearing.

2. The brief facts of the case are that the assessee individual was amongst the category of non-filers of return and the Revenue was in possession of information that the assessee invested Rs. 17, 52,694/- in mutual funds on various dates during the year under consideration. Based on this information a notice u/s. 148 of the Act was issued vide dated: 26.03.2017. In compliance to this notice also, the assessee lady had not filed any return of income and also had not complied with the notices issued to explain the source of the investment. Ultimately, with the paucity of time the case of the assessee was assessed u/s. 144 r.w.s. 147 of the Act and Rs. 17, 52,694/- was treated as income from other sources. The assessee being aggrieved with this order of the AO preferred an appeal before the Ld. CIT (A), who in turn confirmed the order of the AO and dismissed the appeal of the assessee. The assessee again felt aggrieved with the order of the Ld. CIT (A) and preferred the present appeal before us.

3. We have gone through the order of the AO, order of the Ld. CIT (A) and submissions of the assessee alongwith grounds taken before us. Before we proceed with the matter, our attention is invited to the fact that the appeal of the assessee before us was delayed by 23 days. On this issue the assessee filed an affidavit alongwith an application for condonation of delay through her legal heir, as the assessee individual expired on 14.05.2019. We have carefully considered the affidavit and application for condonation of delay and the same is found to be in order and reasonable, **hence delay of 23 days is condoned.**

4. It is submitted before us that the assessee was a senior citizen (82 Years) when the case was re-opened u/s. 148 of the Act and was suffering from various ailments like **Parkinson and Hyperthyroidism** and because of age factor and ailments she had, no return was filed u/s. 139 of the Act as well as 148 of the Act. As the assessee passed away on 14.05.2019, submissions before the Ld. CIT (A) was also made by the legal heir of the assessee. In view of the above facts about the assessee, i.e. age factor and ailments, no adverse view is being taken about her non-compliances and passive participation. We are limiting ourselves to the merits of the case based on various submissions of the assessee before the authorities below and further submitted before us.

5. It is observed that the assessee submitted before the Ld. CIT (A) that the major source of investments in mutual fund was sale proceeds of property at Ajmer during the relevant financial year. As the assessee did not possess the relevant documents of property sales at the time of proceedings before the AO, same were not produced. But now as she got time to procure the same, hence duly produced before the Ld. CIT (A). The assessee submitted additional evidences

in the form of “Sale Deeds”, “Copy of Bank Statement with UCO Bank, A/c. No. 13850100000378 and “Medical Prescriptions” to substantiate the transactions she entered into as well as the state of affairs of her health and age. We have gone through the paper book submitted by the assessee before us vide dated: 16.10.2024 confirming the submission of petition filed before the Ld. CIT (A) for admission of additional evidences, copy of the letter issued by the JAO, asking the assessee to justify the additional evidences filed before the Ld. CIT (A), Submissions of the assessee before the JAO in response to his letter alongwith relevant evidences, copy of the remand report issued by the JAO and assessee’s submission before the Ld. CIT (A).

6. It is also observed that the assessee submitted the copies of her ITR filed for preceding two A.Y.’s and succeeding two A.Y.’s, i.e. 2008-09, 2009-10, 2011-12 and 2012-13. We have carefully considered the bank statement of the assessee and found contention of the assessee to be correct that actual amount of the investments made by the assessee was Rs. 15,38,875/- and not Rs. 17,52,694/- as reproduced herein below in tabular form as under:

S. No.	Date	Investment Made	Amount	Remarks
1.	30.10.2009	HDFC Mutual Fund	1,35,875/-	Mutual Fund
2.	30.10.2009	M/s. Shriram Transport Ltd.	10,50,000/-	F.D.R.
3.	04.12.2009	IDFC	3,50,000/-	Mutual Fund
Total			15,35,875/-	

7. Source of investment as explained by the assessee is as under:

S. No.	Date	Amount	Remarks

1.	24.08.2009	3.5 Lacs	Adv. For plot sale
2.	26.09.2009	45,000/-	Cash recd. For plot sale
3.	29.09.2009	1 Lac	Cheque recd. For plot sale
4.	29.09.2009	1 Lac	Cheque recd. For plot sale
5.	29.09.2009	9 Lacs	Cash recd. For plot sale
6.	06.11.2009	49,000/-	Cash recd. For plot sale
7.	05.02.2010	30,000/-	Cash recd. For plot sale
Total		15.74 Lacs	

We have examined the above submissions with the relevant documents, viz. Sale Deed and Bank Statement furnished by the assessee and found the same to be in order. We found the remand report submitted by the AO to the office of the Ld. CIT (A) was factually incorrect and the AO totally ignored the submissions of the assessee and in a stereo type pattern report was made and submitted to the Ld. CIT (A). In this case considering the type of report prepared by the AO is liable for criticism and became a base for wrong decision in the matter and long drawn litigation reached upto the Tribunal.

8. In our considered view the assessee was able to substantiate the contentions in her favour and duly responded to the queries of the AO during remand proceedings, still he chosen to ignore the same. The assessee inherited the property through her Late husband and duly submitted the fair value of property sold alongwith capital gain on the same, which came to be Rs. 1,35,007/- , hence below taxable limit. Still, she paid Rs. 2, 45,250/- as taxes on the same, which otherwise she is not supposed to pay at all. Above this the Ld. CIT (A), who is a superior authority and powers of the Ld. CIT (A) co-terminus with that of the

AO and has all the powers, what an assessing officers has. The provisions of section 251 of the Act is reproduced herein below as under:

Powers of the Joint Commissioner (Appeals) or the Commissioner (Appeals).

251. (1) *in disposing of an appeal, the Commissioner (Appeals) shall have the following powers—*

- (a) *in an appeal against an order of assessment, he may confirm, reduce, enhance or annul the assessment:*

Provided *that where such appeal is against an order of assessment made under section 144, he may set aside the assessment and refer the case back to the Assessing Officer for making a fresh assessment;*

- (aa) *in an appeal against the order of assessment in respect of which the proceeding before the Settlement Commission abates under section 245HA, he may, after taking into consideration all the material and other information produced by the assessee before, or the results of the inquiry held or evidence recorded by, the Settlement Commission, in the course of the proceeding before it and such other material as may be brought on his record, confirm, reduce, enhance or annul the assessment;*
- (b) *in an appeal against an order imposing a penalty, he may confirm or cancel such order or vary it so as either to enhance or to reduce the penalty;*
- (c) *In any other case, he may pass such orders in the appeal as he thinks fit.*

(1A) *in disposing of an appeal, the Joint Commissioner (Appeals) shall have the following powers—*

- (a) *in an appeal against an order of assessment, he may confirm, reduce, enhance or annul the assessment;*
- (b) *in an appeal against an order imposing a penalty, he may confirm or cancel such order or vary it so as either to enhance or to reduce the penalty;*
- (c) *In any other case, he may pass such orders in the appeal as he thinks fit.*

(2) *The Joint Commissioner (Appeals) or the Commissioner (Appeals), as the case may be, shall not enhance an assessment or a penalty or reduce the amount of refund unless the appellant has had a reasonable opportunity of showing cause against such enhancement or reduction.*

Explanation.—In disposing of an appeal, the Joint Commissioner (Appeals) or the Commissioner (Appeals), may consider and decide any matter arising out of the proceedings in

which the order appealed against was passed, notwithstanding that such matter was not raised before the Joint Commissioner (Appeals) or the Commissioner (Appeals), as the case may be, by the appellant.

9. In view of the above explanation below section 251 of the Act, the Ld. CIT (A) is fully empowered to assess the matter, which were not the part of proceedings before the AO. In our opinion only real income can be taxed and there is no scope of taxing the notional income. As it is transpired that the assessee, came forward fully to adduce the evidences and to discuss the matter before the Ld. CIT (A). In that situation, in our opinion, a liberal view needs to be taken by the Ld. CIT (A) and matter is to be decided on its merits. In view of the above facts and discussions based on evidences adduced before us, we allow the grounds taken by the assessee and the AO is directed to delete the additions made and a further cost is imposed on the AO to reimburse the appeal fees paid by the assessee before the Tribunal and Ld. CIT (A). It is further directed to the superior authorities, to take appropriate action against the then AO and Ld. CIT (A).

10. In the result, the appeal of the assessee is fully allowed in above terms.

Order pronounced in the open court on 20th day of December 2024.

Sd/-

(Dr. S. SEETHALAKSHMI)

JUDICIAL MEMBER

Jaipur, दिनांक/Dated: 20/12/2024

Sd/-

(GAGAN GOYAL)

ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., Sr.DR., ITAT,
5. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Asstt.Registrar)
ITAT, Jaipur

	Details	Date	Initials	Designation
1	Draft dictated on PC on	20.12.2024		Sr.PS/PS
2	Draft Placed before author	20.12.2024		Sr.PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			Sr.PS/PS
6.	Kept for pronouncement on			Sr.PS/PS
7.	File sent to the Bench Clerk			Sr.PS/PS
8	Date on which the file goes to the Head clerk			
9	Date of Dispatch of order			