

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "E" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)  
AND  
SHRI RAHUL CHAUDHARY (JUDICIAL MEMBER)**

**ITA No. 6606/MUM/2024  
Assessment Year: 2011-12**

Ms. Tanuja Balkrishna  
Gidithuri,  
38/A, 1<sup>st</sup> floor, Parekhwadi,  
202, V.P. Road, Prarthana  
Samag,  
Mumbai-400004.  
**PAN NO. AAKPG 8943 Q**  
**Appellant**

ITO -19(3)(5),  
Piramal Chamber,  
Mumbai-400012.  
**Vs.**

**Respondent**

Assessee by : Mr. Sanjay Parikh  
Revenue by : Mr. Hemanshu Joshi, Sr. DR

Date of Hearing : 19/02/2025  
Date of pronouncement : 20/02/2025

**ORDER**

**PER OM PRAKASH KANT, AM**

This appeal by the assessee is directed against order dated 22.10.2024 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment year 2011-12, raising following grounds:



**“A) Not admitting the additional evidences stating that none of the exceptions/circumstances mentioned in Rule 46A was present in the appellant's case**

(1) *The learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [CIT(A)] erred on facts and in law in not admitting the additional evidences stating that none of the exceptions/circumstances mentioned in Rule 46A was present in the appellant's case.*

2) *The learned CIT(A) failed to appreciate that the appellant had not received any notices during the course of assessment proceedings and was hence deprived of furnishing any evidences during the course of assessment proceedings and accordingly her case fell under clause (c) of Rule 46A(1). Hence, the additional evidences were required to be admitted.*

3) *Without prejudice to the above, the learned CIT(A) failed to appreciate that the evidences filed by the appellant were required to be considered to decide the issue on merits and hence the said evidences needed to be admitted.*

4) *Without prejudice to the above, the learned CIT(A) erred in considering all the evidences filed by the appellant including Computation of Total Income filed with the return of Income and case laws relied on as additional evidences while holding that none of the exceptions/circumstances mentioned in Rule 46A was present in the appellant's case.*

5) *Appellant prays that the additional evidences may be admitted and CIT(A) may be directed to decide the appeal considering the additional evidences filed by the appellant.*

**B) Confirming reopening of assessment and the additions made without passing a speaking order**

6) *The learned CIT(A) erred on facts and in law in confirming the reopening of assessments and the additions made without passing a speaking order by holding that the additional evidences having not been taken into consideration and having been dismissed, the other grounds need not be adjudicated.*

7) *The learned CIT(A) failed to appreciate that the grounds regarding reopening of assessment, validity of assessment without serving proper notices on the appellant, service of notice, principles of natural justice being violated, etc. being*



legal grounds could have been decided by him on the basis of assessment records even if he was not inclined to admit the additional evidences filed by the appellant.

8) As the CIT(A) has not decided the appeal on merits, appellant prays that the order of the CIT(A) may be set aside and the CIT(A) may be directed to decide the appeal after considering the submissions of the appellant and also examining the case records of the appellant.

**Without prejudice to the above, not deciding the following grounds:**

**C) Reopening of assessment**

9) The learned AO erred on facts and in law in reopening the assessment of the appellant on the fallacious assumption that the appellant had not filed her return of income and on the assumption that the appellant had not disclosed Capital Gains on sale of House Property and rental income from house property as her income.

**D) Assessment**

10) The learned AO erred on facts and in law in passing the order u/s. 144 r.w.s. 147 without serving the notice u/s. 148 or serving the notice u/s. 143(2) or properly serving the notices u/s. 142(1) and hence the order is bad in law.

11) The learned AO erred on facts and in law in passing the order u/s. 144 r.w.s. 147 without giving a reasonable and sufficient opportunity of being heard to the appellant.

**E) Adding the entire sale consideration of flat as undisclosed income - Rs. 4,90,00,000/-**

12) The learned AO erred on facts and in law in adding the entire sale consideration of flat as undisclosed income of Rs. 4,90,00,000/- without referring to the return of income wherein appellant had already offered the Capital Gain on sale of flat.

**F) Adding rental income of Rs. 8,66,000/-**

13) The learned AO erred on facts and in law in making an addition of Rs. 8,66,000/- on account of rental income without appreciating that the appellant had already offered



*gross rental income of Rs. 10,81,000/- in the return of income.*

2. At the very outset, learned counsel for the assessee drawn our attention to Ground No. 1 of the appeal and submitted that the Ld. CIT(A) failed to admit the additional evidence furnished by the assessee and proceeded to adjudicate the appeal without considering the merits of the case. It has been further contended that the assessee did not receive any of the notices issued by the Assessing Officer during the assessment proceedings, which resulted in non-compliance. In support thereof, the assessee placed on record a copy of the acknowledgments of the income-tax return for the assessment year under consideration as well as for subsequent assessment years, demonstrating that there was no change in the address of the assessee. It has been pointed out that the address mentioned in the acknowledgment for the relevant year and subsequent assessment years is "38/A, First Floor, Parekhwadi, 202 V.P. Road, Prarthana Samaj, Girgaon, Mumbai," whereas the assessment order was issued at "3rd Floor, 144A, V.P. Road, Sicka Nagar, Charni Road, Mumbai." The learned counsel further referred to Paper Book Volume 2 (Pages 49 to 68) and submitted that even on the e-filing portal of the Income-tax Department, the assessee's registered address remains "38/A, First Floor, Parekhwadi, 202 V.P. Road, Prarthana Samaj, Girgaon, Mumbai." It has been urged that at no point in time did the assessee had any nexus with the "Charni Road" address as reflected



in the assessment order. In light of the above, the learned counsel contented that there existed a bona fide reason for the assessee's non-appearance before the Assessing Officer, and, consequently, the additional evidence ought to have been admitted by the Ld. CIT(A). Accordingly, it has been prayed that the order of the Ld. CIT(A) be set aside, and a direction be issued to admit the additional evidence and adjudicate the issue on merits.

3. We have heard the rival submissions advanced by the parties and perused the material placed on record. The primary grievance raised by the assessee pertains to the refusal of the Ld. CIT(A) to admit additional evidence filed under Rule 46A of the Income-tax Rules, 1962 (hereinafter, "the Rules"). The findings recorded by the Ld. CIT(A) are reproduced as under:

*"4. However, since during the assessment proceedings the appellant does not participated, however during the appellate proceedings she has submitted new evidence to justify the claim which has not been produced before the assessing officer. However, for submission of additional as well as new evidence the appellant failed to submit the reasons. Rule 46A of the IT Rules, prescribes the circumstances/exceptions under which the assessee can file additional evidences before the CIT (A), which are as under-*

***(a) Where the AO has refused to admit evidence which ought to have been admitted;  
or***

***(b) Where the assessee was prevented by sufficient cause from producing the evidence which he was called upon to produce by the AO; or***



**(c) Where the appellant was prevented by sufficient cause from producing before the AO any evidence which is relevant to any ground of appeal; or**

**(d) Where the AO has made the order appealed against without giving sufficient opportunity to the assessee to adduce evidence relevant to any ground of appeal.**

5. No such circumstances exist in the case of the assessee. The order u/s 144 of the Act, dated 30.10.2018 was passed after giving sufficient opportunities to the assessee. It is pertinent to mention here that the appellant, who was much vigil to prefer the appeal but, did not bother to attend the assessment proceedings conducted by the Assessing Officer. Further regarding her claim no evidence has been submitted to justify the same.

6. The assessee has, during the assessment proceedings before AO has not participated nor in its application has stated that it was prevented by sufficient cause from producing before the AO the details being submitted by it as "additional evidence". Since the appellant was not prevented by any sufficient reasons. Further, it would also be not out of context to mention here that the laws aid those who are vigilant, not those who sleep upon their rights. This principle is embodied in well know dictum *IGILANTIBUS ET NON DORMIENTIBUS JURA SUB VENIUNT.*" Therefore, submission of the additional evidence at this stage is not acceptable and is rejected.

7. Since, none of the exceptions/circumstances mentioned in Rule 46A of the IT Rules is present in assessee case; I am not inclined to admit the additional evidence submitted by the assessee.

8. Therefore, addition made by the AO in assessment order holds good. Thus, the addition made by the AO is hereby confirmed. This ground of appeal is dismissed. Since the additional evidences filed by the appellant have not been taken into consideration and the ground



*has been dismissed. The other grounds need not to be adjudicated.”*

3.1 The learned counsel for the assessee submitted that the address recorded in the assessment order pertains to a location with which the assessee has no connection and that, consequently, the notices issued by the Assessing Officer were not received. The record reflects that the assessee's registered address on the Income-tax Department portal and the acknowledgment of returns for assessment years 2014-15 to 2019-20 is "38/A, First Floor, Parekhwadi, 202 V.P. Road, Prarthana Samaj, Girgaon, Mumbai." The discrepancy in the address raises a pertinent issue as to whether the assessee was duly served with notices during the course of assessment proceedings. Upon due consideration of the facts and circumstances, we are satisfied that the assessee was prevented by sufficient cause from producing the relevant evidences before the Assessing Officer. In such a situation, the provisions of Rule 46A(b) and (c) of the Rules are attracted, and the additional evidence ought to have been admitted by the Ld. CIT(A). Accordingly, we find it just and proper to direct the Ld. CIT(A) to admit the additional evidence and adjudicate the issue in accordance with the law. The Ld. CIT(A) shall, after admitting such evidence, call for a remand report from the Assessing Officer and thereafter render a decision on merits. In view of the foregoing, Ground No. 2 of the appeal stands allowed. Since we have already allowed the ground No. 2 of the appeal of the assessee and restored



the matter back to the file of the Ld. CIT(A), the remaining grounds are not required to be adjudicated upon at this stage.

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

**Order pronounced in the open Court on 20/02/2025.**

**Sd/-  
(RAHUL CHAUDHARY)  
JUDICIAL MEMBER**

**Sd/-  
(OM PRAKASH KANT)  
ACCOUNTANT MEMBER**

Mumbai;  
Dated: 20/02/2025  
Rahul Sharma, Sr. P.S.

**Copy of the Order forwarded to :**

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

//True Copy//

BY ORDER,  
(Assistant Registrar)  
**ITAT, Mumbai**