

| आयकर अपीलीय अधिकरण न्यायापीठ, मुंबई |
IN THE INCOME TAX APPELLATE TRIBUNAL
"G" BENCH, MUMBAI

BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER
&
SHRI ANIKESH BANERJEE, HON'BLE JUDICIAL MEMBER

I.T.A. No. 1274/Mum/2025
Assessment Year: 2017-18

| | | |
|---|----|-------------------------------------|
| Sushma Haresh Ubale 10/204, Millenium Park Off Easter Express Highway Hariom Nagar Mulund (E) Mumbai - 400081 [PAN: ABDPU5941N] | Vs | ITO, Ward - 41(2)(5), Mumbai |
| अपीलार्थी/ (Appellant) | | प्रत्यर्थी/ (Respondent) |

| | |
|---------------|---------------------------------|
| Assessee by : | Shri Rajesh Shah, A/R |
| Revenue by : | Shri Swapnil Choudhary, Sr. D/R |

सुनवाई की तारीख/Date of Hearing : 21/07/2025
घोषणा की तारीख /Date of Pronouncement: 23/07/2025

आदेश/ORDER

PER NARENDRA KUMAR BILLAIYA, AM:

This appeal by the assessee is preferred against the order dated 28/12/2024 by NFAC, Delhi [hereinafter 'the CIT(A)'] pertaining to AY 2017-18.

2. The grievance of the assessee reads as under:-

- “1. a) On the facts and circumstances of the case and in law, learned CIT(A)-NAFC erred in not admitting the appeal and not adjudicating any of the grounds of appeal.
- b) On the facts and circumstances of the case and in law, the learned CIT(A) is not justified in dismissing the appeal in limine by wrongly applying the provisions of section 249(4) of the Act and wrongly interpreting the provisions of the said section read with S.234B and 208 of the act.
- c) The learned CIT(A) ought to have given an opportunity to the appellant to give response to the applicability of the provisions of S.294(b) of the act. The natural justice requires that the proper opportunity be given to the appellant.

2. On the facts and circumstances of the case and in law, learned CI(A) NAFC erred in not adjudicating ground in respect of reopening of the assessment as follows:

- The AO erred in re-opening the assessment of the appellant though the property in question does not belong to the appellant but to Haresh Ratan Ubale, husband of the appellant, who is the first purchaser in the agreement. The name of the appellant was added only for the sake of convenience.
- The appellant submits that the payments were made by said Haresh Ratan Ubale.
- The payments were also made in earlier year and therefore the re-opening of the assessment is bad in law.

3. a) On facts and circumstances of the case and in law, the AO wrongly re-opened the assessment u/s.147 of the act though on facts and in law the provisions of S.147 are not applicable for A.Y.2017-18 to the appellant.

- The re-opening of the assessment itself is bad in law.
- Considering the amended provisions in respect of S.148A r.w.s.148 and S.149 and also considering the Supreme Court decision in the case of UOI Vs. Ashish Agrawal and various other High Court decisions, the re-opening of the assessment for the year ended 31/03/2017 is bad in law.
- The AO erred in not considering that the property is in joint name and the name of the appellant is second only for the sake of convenience.
- To re-open the assessment the Income chargeable to tax has escaped assessment amounts to or is likely to amount to Rs.50,00,000 or more and the AO has to establish as to how the said Income has been represented in the form of asset, which has not been the case of the appellant.

As per the provisions unless there is an information which suggests that there is an escapement of Income, re-opening is bad in law. However, in the appellant's case there is no suggestion of escapement of Income but talks about transaction and hence re-opening is bad in law.

- The AO has wrongly re-opened the assessment though the permission from prescribed authority namely Principal Chief CIT is not taken. The notice itself is invalid.
- The learned AO wrongly issued the notice u/s.148 on 31/07/2022 which is not having DIN number. The notice issued u/s.148 without DIN number is invalid and the reassessment pursuant to the same is also invalid and void ab initio. The DIN taken subsequent to issue of notice is invalid and bad in law.
- The AO wrongly issued Intimation letter dated 31/07/2022 (though not received by the appellant) intimating that DIN has been taken, however said letter is without signature and as per the Department letter without signature is invalid.

4. The AO erred in adding a sum of Rs.30,68,750 u/s.69 of the act being unexplained investment, though the property does not belong to the appellant. The whole addition is made on wrong footings is required to be deleted.

5. a) *Without prejudice to above, the AO erred in adding a sum of Rs.30,68,750 u/s.69 of the act being unexplained investment, though the investment is made out of known source.*

b) *Without prejudice to above, the AO erred in adding a sum of Rs.30,68,750 u/s.69 of the act being unexplained investment, though the investment was made in earlier year and hence cannot be added during the year.*

6. a) *The AO erred in adding a sum of Rs.54,60,000 u/s.56(2)(vii)(b)(ii) of the act, though the property was purchased in 2011 and a Stamp Duty Valuation was much lower than the Agreement Value.*

b) *The AO ought to have taken a valuation from DVO or should have raised the query for not agreeing to the valuation as stated by the appellant.*

c) *The appellant submits that the value of 2011 cannot be same that of 2017, which even AO was aware of it. In fact, the AO ought to have guided the appellant to take valuation before the assessment is completed. The circulars states that the AO is required to guide the assessee in case of difficulties.*

d) *Without prejudice to above, the appellant would like to submits that the valuation and for which the petition would be made under Rule 46A of the Rules.*

e) *Without prejudice to above, as stated in earlier ground the property does not belong to the appellant and hence no addition can be made u/s. 56(2)(vii)(b)(ii) of the act.*

7. a) *On the facts and circumstances of the case and in law the AO erred in charging interest u/s.234A of the act of Rs.2,74,680.*

b) *On the facts and circumstances of the case and in law the AO erred in charging interest u/s.234B of the act of Rs.29,03,760.*

8. *The learned Assessing Officer wrongly initiated Penalty under section 270A and under section 271AAC of the act, though the provisions are not applicable to the facts of the case.*

9. *The appellant craves leave to add, amend, modify, cancel and or substitute any of the grounds of the appeal."*

3. Having heard the rival contentions, we have carefully perused the orders of the authorities below.

4. Briefly stated the facts of the case are that the assessee filed her return of income on 31/03/2018 declaring total income at Rs. 1,50,500/-. As the returned income of the assessee did not require any payment of advance tax, none was paid. The returned income of the assessee was

assessed at Rs. 86,79,250/- and the assessee challenged the assessment before the Id. CIT(A).

5. The appeal of the assessee was dismissed as the assessee did not file any return of income pursuant to the notice u/s 148 of the Act and the Id. CIT(A) was of the opinion that the assessee did not pay the advance tax due on the income returned by him, invoking the provisions of Section 249(4) of the Act.

6. It is not in dispute that the return of income filed by the assessee at Rs. 1,50,500/- does not require payment of any advance tax. In the considered opinion of the Bench, if any advance tax is payable, that has to be decided by the assessee and if there is no advance tax payable, then, the assessee need not deposit the same and, therefore, the appeal of the assessee should have been admitted by the Id. CIT(A) and decided on merits of the case. Our view is fortified by the decision of the Co-ordinate Bench in *ITA No. 1670/Pun/2024 order dated 27/01/2025*, wherein the Co-ordinate Bench held as under:-

“6. We have heard Ld. DR and perused the material available on the record. We find that Ld. CIT(A)/NFAC dismissed the appeal of the assessee, without admitting the same for adjudication, on the sole ground of non-payment of advance tax in accordance with section 249(4)(b) of the IT Act. In this regard, we are of the considered opinion that the advance tax if any payable as per section 249(4)(b) of the IT Act is to be determined at the behest of the assessee. If there is no advance tax liability according to the assessee, then he need not to deposit the same & Ld. CIT(A)/NFAC is required to admit the appeal of the assessee in such an event. In the instant case, it is the claim of the assessee that since the assessee remained absent the assessment order was passed ex-parte & whatever deductions were legally available to the assessee were not allowed by the Assessing Officer. It is the contention of the assessee that being cooperative society the business income of the assessee was subject to deduction 80P(2)(a)(i) and 80P(2)(d) of the IT Act and due to ex-parte order the same deductions were not allowed which resulted in determination of unnecessary taxable income in the hands of the assessee. We find that the appeal of the assessee was dismissed in a summary manner without admitting the same for adjudication on merits of the case. It was the

observation of Ld. CIT(A)/NFAC that the assessee was required to deposit advance tax in the light of section 249(4)(b) of the IT Act & when the assessee was issued show cause to explain this point he did not chose to file any application to exempt him from payment of advance tax in the light of the fact that no advance tax is payable by him. In this regard, we find support from the decisions passed by Co-ordinate Bench of the Tribunal in the case of Dilip Hiralal Chaudhari vs. ITO in ITA No.642/PUN/2024 order dated 05.06.2024 and in the case of Vishnusharan Chandravanshi vs. ITO in ITA No.73/RPR/2024 order dated 10.04.2024 and also from the judgement passed by Hon'ble Karnataka High Court in the case of Govidappa Setty vs. ITO, 232 ITR 892 (Karnataka) wherein under similar circumstances the appeal of the assessee was allowed. Accordingly, considering the totality of the facts of the case and without going into merits of the case, we deem it appropriate to set-aside the order passed by Ld. CIT(A)/NFAC and remand the matter back to him with a direction to admit the appeal of the assessee & adjudicate the same on merits of the case after providing reasonable opportunity of hearing to the assessee. The assessee is also hereby directed to respond to the notices issued by Ld. CIT(A)/NFAC and submit the requisite details on the appointed date without seeking any adjournment under any pretext, failing which Ld. CIT(A)/NFAC is at liberty to pass appropriate order as per law. Thus, the grounds of appeal raised by the assessee are partly allowed."

7. In light of the above, we restore the appeal to the file of the ld. CIT(A) and the ld. CIT(A) is directed to decide the appeal of the assessee afresh on merits of the case after affording reasonable and adequate opportunity of being heard to the assessee.

8. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the Court on 23rd July, 2025 at Mumbai.

Sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Sd/-

(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Mumbai, Dated 23/07/2025

30/7/25

6

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, मुंबई /DR,ITAT, Mumbai,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Mumbai