



**IN THE INCOME TAX APPELLATE TRIBUNAL
VARANASI CIRCUIT BENCH 'SMC', VARANASI**

BEFORE SHRI. SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

ITA No.50/VNS/2022
Assessment Year: 2012-13

Gunjan Rungta Onkar Vatika Colony Padrauna, Kushinagar (U.P)	v.	The Income Tax Officer Ward 2(4) Kushinagar
TAN/PAN:AGMPR5334G		
(Appellant)		(Respondent)

Appellant by:	Shri Ashish Bansal, Advocate
Respondent by:	Smt Amandeep Kaur, D.R.

ORDER

This appeal has been preferred by the assessee against order dated 15.06.2022, passed by the National Faceless Appeal Centre, Delhi (NFAC) for Assessment Year 2012-13.

2.0 The brief facts of the case are that the assessee had not filed the return of income for the year under consideration. The Income Tax Department was in possession of information that during the year under consideration the assessee had purchased an immovable property for a consideration of Rs.30,50,000/-. To examine this transaction, the case of the assessee was reopened under section 147 of the Income Tax Act, 1961 (hereinafter called "the Act") after issuing notice under section 148 of the Act. However, there was no response from the side of the assessee to the notice under section 148 of the Act. Thereafter, the

Assessing Officer (AO) issued statutory notices to the assessee, requiring the assessee to explain the source of investment in immovable property. However, there was still no response from the side of the assessee. Thereafter, the AO obtained copy of the Sale Deed of the impugned property from the concerned Revenue Department, from which it was observed that the assessee and one Ms. Namrata Devi had jointly purchased a flat situated at Shahpur, Gorakhpur for a consideration of Rs.30,50,000/-. Since the assessee had failed to comply with the notices issued by the Department, whole of the amount of Rs.30,50,000/- and stamp value of Rs.2,12,500/-, totaling to Rs.32,63,500/- was treated as undisclosed investment under section 69 of the Act. Since the property was jointly purchased by the assessee with Ms. Namrata Devi, 50% of the investment, i.e. Rs.16,31,750/-, was treated as undisclosed investment by the assessee and was added to the total income of the assessee under section 69 of the Act.

2.1 The AO also initiated penalty proceedings under sections 271(1)(b) and 271(1)(c) of the Act, separately.

2.2 Aggrieved, the Assessee preferred an appeal before the NFAC and submitted before it that the assessee had taken a loan of Rs.10 lakhs from Smt. Minakshi Diswania on 02.09.2011 and

that this amount received by cheque was deposited in her bank account and from the same bank account payment was made to the builder for purchase of the said property. In this regard, the NFAC obtained Remand Report from the AO, which was forwarded to the assessee. However, as per the NFAC, the assessee could not controvert the observations of the AO in the Remand Report. In this view of the matter, the NFAC did not accept the claim of the assessee of having taken loan of Rs.10 lakhs from Smt. Minakshi Diswania for purchase of the impugned property and considered the same as unexplained income of the assessee. The NFAC accordingly restricted the addition to Rs.10 lakhs as against Rs.16,31,750/- made by the AO under section 69 of the Act.

2.3 Being further aggrieved, the assessee has approached this Tribunal challenging the order of the NFAC, by raising the following grounds of appeal:

1. BECAUSE the initiation of proceedings under section 147 of the Act, by the issuance of notice dated 27.03.2018 under section 148 of the Act, is wholly erroneous and void-ab-initio as the same has been invoked by the ACIT, Circle -II, Gorakhpur, who was not having valid jurisdiction in the case of the appellant at that time.

2. BECAUSE in the absence of jurisdictional notice under section 148 having been issued by the Assessing Officer

having valid jurisdiction in the case of the appellant, the entire proceedings right from initiation to the conclusion thereof is vitiated being void-ab-initio.

3. BECAUSE there existed no cogent 'material' which could form 'reason to believe' for the ACIT, Circle II, Gorakhpur (who was not having valid jurisdiction in the case of the appellant) for initiation of proceedings under section 147 of the Act against the appellant, as basic facts in the form of ITR of the appellant was not in his possession, accordingly, the proceedings carried (although invalid as it was) out against the appellant was merely for the purposes of 'roving and fishing inquiry', which is wholly erroneous and bad in law.

4. BECAUSE the initiation of reassessment proceedings under section 147 of the Act by the ACIT, Circle - II, Gorakhpur as also conclusion thereof by the ITO vide assessment order dated 31.10.2019 is wholly vitiated and the same being without jurisdiction, the addition of Rs.10,00,000/- as has been sustained by the ld. CIT(A) vide impugned appellate order dated 15.06.2022 is liable to be deleted.

WITHOUT PREJUDICE TO THE AFORESAID

5. BECAUSE the ld. CIT(A) has erred in law and on facts, in sustaining the addition of Rs.10,00,000/-, out of Rs.16,31,750/- made by the ITO, as the said amount of Rs.10,00,000/- was procured by the appellant as 'unsecured loan' for purchasing the property from Gemini Builders, which is duly reflecting in her bank account as 'transfer entry' from the account of the credit borrower, as also

appearing in the balance sheet submitted by the appellant during the course of appellate proceedings.

6. BECAUSE the amount received as loan by the appellant could be duly verified from the records submitted by the appellant, in the absence of the response being made by the appellant (due to the reasonable cause beyond her control), for the verification of the same, the matter may be remanded by this hon'ble court before the ITO, so that the principles of natural justice is allowed to her.

7. BECAUSE the CIT(A) has erred in law as well as on facts in not adjudicating the issue relating to the addition made by the ITO of Rs.70,000/-which was incurred by the appellant towards 'stamp duty' paid out of her accumulated past savings, for the purchase of the property.

8. BECAUSE the appellant's father-in-law was suffering from cancer which was in advance stage and he has deceased on 26.07.2022 also, she was not in a position to communicate with her counsel for submitting a response to the remand report before the appellate authority.

9. BECAUSE the order appealed against is contrary to the facts, law and principles of natural justice.

3.0 The Ld. Authorized Representative for the assessee (Ld. A.R.) submitted that there is a delay of 73 days in filing the appeal before the Tribunal. He further submitted that the assessee had filed an application dated Nil for condonation of delay, stating therein that during the relevant period when the

order was passed by the NFAC, father-in-law of the assessee was suffering from cancer and the assessee was fully involved in taking care of her father-in-law. It was further stated that father-in-law of the assessee finally passed away on 26.07.2022 and, therefore, due to complete disturbance in the family, the matter could not be communicated to the Counsel for filing the appeal before the Tribunal. The assessee has also filed Death Certificate dated 05.08.2022 issued by Department of Medical and Health, Nagar Palika Parishad Padrauna, certifying the death of Jagdamba Prasad Rungta (father-in-law of the assessee) on 26.07.2022. The prayer of the Ld. A.R. was that the delay caused in filing the appeal was not deliberate and that it was beyond the control of the assessee, which may please be condoned and the appeal be heard on merits.

4.0 The Ld. Sr. D.R. had no objection to the delay being condoned.

5.0 In view of the prayer made by the Ld. A.R. and no objection by the Ld. Sr. D.R., I condone the delay in filing of the appeal and admit the appeal for hearing.

6.0 During the course of hearing before us, the Ld. Authorized Representative for the assessee (Ld. A.R.) submitted that both the authorities below have passed orders without

properly considering the evidences. The Ld. A.R. prayed that the matter may be restored to the file of the AO and if an opportunity is given, the assessee will produce all the relevant documents relating to purchase of immovable property before the AO.

7.0 The Ld. Sr. D.R. had no objection to the restoration of appeal to the file of the Assessing Officer as requested by the Ld. A.R.

8.0 I have heard both the parties and have also perused the material on record. Looking into the peculiar facts of this case and the prayer of the Ld. A.R., I am of the considered view that the assessee deserves one more opportunity to present her case and, therefore, I restore this file to the Office of the Assessing Officer with the direction to provide an opportunity to the assessee to present her case and to produce all the necessary evidences in support of the transaction entered into for the purchase of immovable property. I also caution the assessee to fully comply with the directions of the Assessing Officer in the set-aside proceedings when called upon to do so, failing which, the Assessing Officer would be at complete liberty to pass the order in accordance with law, based on the material available on record even if it is ex-parte qua the assessee.

9.0 In the result, the appeal of the assessee stands allowed for statistical purposes.

Order pronounced in the open Court on 10/10/2025.

Sd/-
[SUDHANSHU SRIVASTAVA]
JUDICIAL MEMBER

DATED:10/10/2025

JJ:

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

By order

Assistant Registrar/DDO