

THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "SMC" BENCH

Before: Ms. Suchitra Kamble, Judicial Member

**ITA No. 121/Ahd/2024
Assessment Year 2013-14**

Rajlaxmi Satishkumar Sharma, Ahmedabad PAN: BOKPS6286R (Appellant)	Vs	The Income Tax Officer, Ward-3(3)(2), Ahmedabad, (Respondent)
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Assessee by: Shri B.K. Patel, A.R.

Revenue by: Shri Sanjay Jain, Sr. D.R.

Date of hearing : 08-04-2024

Date of pronouncement : 12-04-2024

आदेश/ORDER

This is an appeal filed against the order dated 15-12-2023 passed by National Faceless Appeal Centre (NFAC), Delhi for assessment year 2013-14.

2. The grounds of appeal are as under:-

"GROUND NO.1

The Learned Commissioner of Income Tax (Appeals) NFAC, Delhi (thereinafter referred to as "the Ld. CIT(A)") has erred in law in facts as much as confirming the addition made by the learned AO without considering the facts that the payment made for purchase of

property for which the investment is made by her son from his own independent source. The assessee is mother of the actual purchaser of the property and for the sack of convenience only her name is appearing in the conveyance deed. The entire amount of Rs 40,41,870/- being the purchase price of the property in fact is paid by the Join owner- Son which is duly disclosed in his return of income which needs to be deleted by appropriate order.

GROUND No.2

That the Appellate Order passed by the Ld. CIT(A) is highly illegal, bad in law, unsustainable and not in accordance with the provisions of law. It is prayed that the Order passed may please be annulled

GROUND No.3

3.1 On the facts and in the circumstances of the case as well as in law, the Ld CIT(A) has erred in dismissing the appeal in limine holding it as not maintainable under the provisions of section 249(4)(b) of the Act which is highly unjustified, unwarranted, unsustainable, not proper on facts and not in accordance with the provisions of law and the appeal is dismissed on the basis of technical issue only stating that "Neither return of income has been filed nor an amount equal to the amount of advance tax as per section 249(4)(b) of the income tax, 1961 has been paid particulars of payment mentioned. In fact the assessee is having income below basic exemption and was not required to file the return of income.

3.2 The Ld CIT(A) has failed to appreciate that the appellant has income below the exemption limits and not liable to file the Return of Income as well as not liable to pay the taxes / advance tax and hence, there were good and sufficient reasons for such contravention. Hence, the Ld. CIT(A) ought to have exercised his discretion in favour of the appellant and ought to have exempted the appellant from the operation of clause (b) of section 249(4) of the Act. Hence, it is prayed that the Order passed by the Ld. CIT(A) may please be annulled and may please be set aside for adjudication on merits.

That the appellant craves leave to add, amend, alter or delete all or any of the grounds of appeal at the time of hearing of the appeal."

3. The assessee has not filed original return of income for assessment year 2013-14 and the case was reopened for the

reason that the assessee purchased immovable property of Rs. 38,52,870/- and also incurred stamp duty expenses at Rs. 1,89,000/- thus the total investment of assessee was Rs. 40,41,870/-. After recording reasons u/s. 147 of the Income Tax Act, 1961, notice u/s. 147 of the Act dated 18-03-2010 was issued after obtaining the necessary satisfaction of the Pr. CIT. The said notice u/s. 148 was served upon the assessee on 18-03-2012 through registered email id of the assessee. Notice u/s. 142(1) dated 02-12-2020 issued by the ITO along with detailed questionnaire. The assessee did not furnish any reply of notice u/s. 142(1). Notice u/s. 142(1) dated 17-05-2021 was also served to the assessee. The assessee did not file return in response to the notice u/s. 148 dated 18-03-2020. The assessee filed reply on 25-08-2021 thereby stating that the assessee is having less income which is below the taxable limit and therefore she was not required to file ITR for assessment year 2013-14. The assessee also filed copy of document deed on immoveable property transaction carried out in the financial year 2012-13. The Assessing Officer assessed total income of the assessee at Rs. 40,41,870/- u/s. 144/147 r.w.s. 144B of the Income Tax Act, 1961.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee for statistical purposes.

5. The ld. A.R. submitted that the CIT(A) did not consider the facts that the payment made for purchase of property for which the investment is made by her son from his own independent source. The assessee is the mother of the actual purchaser of the property and for the sake of convenience only her name is appearing in the conveyance deed the entire amount of Rs. 40,41,870/- being the purchase price of the property, in fact, is paid jointly who is a son of the assessee which is duly disclosed in the return of income of assessee's son and therefore the assessee has rightly filed the response to the statutory notice thereby stating that the assessee is not required file any return as her income is below the taxable limit. The ld. A.R. further submitted that the CIT(A) erred in dismissing the appeal in limine holding it as not maintainable under the provisions of section 249(4)(b). The ld. A.R. submitted that the assessee has income below the exempt limit and is not liable to file the return of income as well as not liable the taxes/advance tax and hence there were good and sufficient reasons for such contravention.

6. The ld. D.R. submitted that as per section 249(4)(b) the assessee is liable to file the return of income and pay the advance tax before filing the appeal before the CIT(A). The assessee failed to do so therefore the CIT(A) rightly dismissed

the appeal of the assessee. The ld. D.R. relied upon the assessment order and the order of the CIT(A).

7. Heard both the parties and perused all the relevant materials available on record. It is pertinent to note that the provisions of section 249(4)(b) of the Act is clear that the appeal before the CIT(A) should be admitted only when the assessee paid the advance tax where return of income has not been filed. The proviso to said section also describes that the assessee will get exemption from this clause if the application is made before the CIT(A) for not filing return of income or paying advance tax. But in the present case in peculiar circumstances, the assessee has explained that the assessee herself has not obtained the said property but her son has paid the said amount for purchase of property from his own fund. In fact, the assessee's son is a joint owner of the said property and for the sake of conveyance specially the conveyance deed, the stamp deed is lesser therefore the assessee's name has been utilised in the conveyance deed. The relation is direct relation between the mother and son and therefore this should have been considered by the Assessing Officer as well as by the CIT(A). In the peculiar circumstances of the present case, the proviso to section 249(4)(b) of the Act should have been pointed out by the CIT(A) during the hearing which the CIT(A) failed to do so. Merely on the technical

ground, the appeal before the CIT(A) cannot be dismissed and in fact after seeing the merit of the case, it appears that the transaction was not doubted and the investment made by the son of the assessee was also not questioned by the Assessing Officer. Therefore, the appeal of the assessee is allowed. This decision is based on the peculiar facts of the present assessee's case and cannot be treated as precedent.

8. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 12-04-2024

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Ahmedabad : Dated 12/04/2024

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद