R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

WRIT PETITION NO. 1824 OF 2019

Daxa Bipin Dedhia .. Petitioner

Versus

Pr. Commissioner of Income Tax-30 & Ors… Respondents

....

- Mr. Dharam V. Gandhi a/w Mr. Harsh Kapadia for the Petitioner
- Mr. Sham Walve for the Respondents

....

CORAM : AKIL KURESHI &
S.J. KATHAWALLA, JJ.

DATE : AUGUST 5, 2019.

P.C.:

1. The petitioner has challenged an order dated 12.3.2019 passed by the Commissioner of Income Tax dismissing the petitioner's revision petition under Section 264 of the Income Tax Act, 1961 (**"the Act"** for short).

2. At the outset, learned counsel for the petitioner stated that the petitioner had also filed Income Tax Appeal against the same order of assessment, however, the same was subsequently withdrawn.

3. Brief facts are as under:-

The petitioner is an individual. For the assessment year 2010-11, she had not filed return of income believing that she had no taxable income. The Assessing Officer, however, issued notices calling upon her to file the return and proposed to take into scrutiny her transactions during the year under consideration. It appears that some of the notices were dispatched to the earlier address of the petitioner and the subsequent notices were issued shortly before the assessment would become time barred. At the later period, the case of the petitioner is that her husband was ill. He was one who was looking after her finance and other affairs. The petitioner, therefore, could not respond to such notices.

4. Under such circumstances, the Assessing Officer passed the order of assessment on 26.12.2017 exparte and held that the petitioner had total income of Rs. 67,60,000/- during the said year. In the order of assessment, he has recorded that the petitioner had purchased two immovable properties for a total consideration of Rs. 66 Lakhs, the source of which was not disclosed.

5. The petitioner filed Revision Petition before the Commissioner in which she first sought to explain the reasons for non appearance before the Assessing Officer. She pointed out that earlier notices were issued at her Malad address which she had changed nearly three years earlier to the knowledge of the Department. She further pointed out that her financial and tax matters had been looked after by her husband who recently gone through medical surgery of hip replacement; he was bedridden and could not attend the office of the Assessing Officer. In the context of merits, she pointed out that she had entered into two transactions. One is for the sale of immovable property in the nature of flat sold on 19.6.2009 for total consideration of Rs. 30 Lakhs. She was 50% owner thereof and other 50% belonged to her husband. She has thus received sale consideration of Rs. 15 Lakhs from this sale. She had purchased another immovable property in the nature of flat on 3.8.2009 for total consideration of Rs. 36 Lakhs, again her share being 50% thereof, the remaining 50% having come from her husband.

Along with Revision Petition, she also tried to file a return explaining these details further.

6. The Commissioner, by the impugned order, heard Revision Petition only on the ground that the assessee was granted more than sufficient opportunities despite which she failed to appear before the Assessing Officer in response to several notices. He did not examine the petitioner's contentions on merits.

7. Having heard the learned counsel for the parties and having perused the documents on record, in view of the confusion about services of earlier set of notices on the petitioner's correct address and the reasons cited by her in not being able to respond to the later notices which were duly served on her on account of her husband's ill health, we would request the Commissioner to examine her Revision Petition on merits. It is true that the petitioner not having participated before the Assessing Officer, necessary material in support of her contentions, could not be verified. Nevertheless, it would not be difficult for the Commissioner to do so while re-examining her Revision Petition. He could either call for a remand report and decide this issue himself or remand the proceedings before the Assessing Officer for fresh assessment.

8. The petitioner's representation that she had never purchased two properties as suggested by the Assessing Officer needs further examination. Her statement that she had sold one property and purchased another, both transactions being jointly done by her and her husband having equal shares, also requires further examination.

9. Under these circumstances, the impugned order dated 12.3.2019 passed by the Commissioner is set aside. The Commissioner is requested to examine the Revision Petition on merits and disposed of the same in accordance with law.

10. Writ Petition is accordingly disposed of.

[S.J. KATHAWALLA, J.] **[AKIL KURESHI, J]**