

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A", MUMBAI**

**BEFORE SHRI G.S. PANNU, ACCOUNTANT MEMBER AND
SHRI RAVISH SOOD, JUDICIAL MEMBER**

ITA NO. 1775/MUM/2015 : **A.Y : 2009-10**

Abdul Sadiq Choudhary
Prop. M/s. Fahad Tar Product,
Shastrinagar, Kurla Andheri Road,
Kurla (W), Mumbai 400 070.
PAN : ACXPC2298P (Appellant)

Vs. ITO-21(3)(1),
Mumbai (Respondent)

Appellant by : **Shri K. Gopal**

Respondent by : **Shri Rajesh Kumar Yadav**

Date of Hearing : **22/03/2018**

Date of Pronouncement : **15/06/2018**

ORDER

PER G.S. PANNU, AM :

The captioned appeal by the assessee is directed against the order of CIT(A)-38, Mumbai dated 29.12.2014 pertaining to Assessment Years 2009-10, which in turn have arisen from the order passed by the Assessing Officer, Mumbai, dated 30.12.2011 u/s 143(3) of the Income Tax Act, 1961 (in short 'the Act').

2. In this appeal, assessee has raised the following Grounds of appeal :-

- “1. *The Ld. Commissioner of Income-tax (Appeals)-38, Mumbai [hereinafter referred as "CIT(A)"] erred in passing the appellate order dated 29.12.2014 confirming the assessment order dated 30.12.2011 passed under section 143(3) of the Act. The Appellant strongly objects to the various additions and disallowances made in the assessment order.*
2. *Addition by treating the cash/credit deposited in the saving bank account as unexplained cash credit under section 68 not justified- Rs. 31,93,275/-*

 - i. *The Ld. CIT(A) erred in confirming the action of the Ld. A.O. in making addition of Rs.31,93,275/- by treating the cash /credit deposited in the saving bank account as unexplained under section 68 of the Act without appreciating the facts and circumstances of the case.*
 - ii. *The Ld. CIT(A) failed to appreciate that the cash/credit deposited in the saving bank account is out of consideration received from sale of agricultural land. Hence, addition of Rs.31,93,275/- under section 68 of the Act is unjustified and the same may be deleted.*
3. *Addition on account of Unexplained Investment under section 69 of the Act unjustified- Rs. 1,67,91,500/-*

 - i. *The CIT(A) erred in confirming the action of the Ld. A.O. in making addition of Rs. 1,67,91,500/- invoking the provisions of section 69 of the Act without appreciating the facts and circumstances of the case.*
 - ii. *The Ld. CIT(A) failed to appreciate that the consideration paid for purchase of office premises was out of sale proceeds of agricultural land at native place. Hence, treating the purchase consideration as unexplained investment under section 69 of the Act is unjustified and the same may be deleted.*
 - iii. *Without prejudice to the above the Ld. CIT(A) further failed to appreciate that total consideration paid by the Appellant towards purchase of office premises is only Rs.88,02,000/-. Hence, addition of Rs.1,67,91,500/- is unjustified and the same may be deleted.*

4. *Addition under the head Short Term Capital Gain unjustified-Rs.11,50,000/-*
- i. *The Ld. CIT(A) erred in upholding the action of the Ld. A.O. in making addition of Rs.11,50,000/- under the head Short Term Capital Gain on sale of ancestral agricultural land without appreciating the facts and circumstance of the case.*
- ii. *The Ld. CIT(A) failed to appreciate that the amount of Rs.11,50,000/- was received on sale of ancestral agricultural land. Hence, treating the same as Short Term Capital Gain is without any basis and the same may be deleted.*
5. *The Ld. Assessing Officer erred in levying interest under Sections 234A, 234B, 234C and 234D without appreciating the fact that the appellant denies his liability to the same.”*

3. In this appeal, assessee has challenged three additions which have been sustained by the CIT(A), namely, addition of Rs.31,93,275/- u/s 68 of the Act made by treating cash/credits deposited in the savings bank account as ‘unexplained’; secondly, addition of Rs.1,67,91,500/- u/s 69 of the Act by treating investment in acquisition of property as ‘unexplained’; and, thirdly, addition of Rs.11,50,000/- made as Short Term Capital Gain on sale of agricultural land.

4. At the time of hearing, the first and the foremost plea raised by the learned representative for the assessee was that both the lower authorities have failed to appreciate the facts in their proper perspective and that if the material and evidences are considered appropriately, the additions were not maintainable and, in any case, were much in excess even on the point of reasonableness.

5. Before we proceed to adjudicate the specific arguments raised, a brief background of the manner in which the additions have been made by the lower authorities is summarised as follows. A perusal of the orders of the authorities below reveal that the appellant is an individual engaged in the business of Coal Tar scrap dealer under his proprietary concern, M/s. Fahad Tar Product. For Assessment Year 2009-10, assessee had filed a return of income declaring an income of Rs.2,84,638/-, which was subject to a scrutiny assessment whereby the total income has been assessed at Rs.2,14,16,410/- by making the three additions which are in dispute before us. Notably, a sublime observation of the Assessing Officer in the assessment order with regard to each of the additions is to the effect that inspite of opportunities being granted to the assessee, the relevant explanation or material was not furnished in support of the return of income. Be that as it may, firstly, the Assessing Officer noted that assessee had not reported in the return of income a bank account maintained with Bank of Baroda, Kurla Bail Bazar Branch, wherein cash deposit of Rs.18,96,500/- and credit entries of Rs.12,96,775/- were appearing. In the absence of any explanation, he treated the same, i.e. Rs.31,93,275/- as 'unexplained cash-credit' assessable u/s 68 of the Act. Secondly, the Assessing Officer has referred to an AIR information received from Jt. Sub Registration Office (M.S.D), Kurla-3 and Jt. Sub Registration Office (M.S.D), Kurla-4 which showed that assessee had transacted in immovable property for sums of Rs.67,50,000/- and Rs.52,41,500/-. In the absence of any specific details or explanation furnished regarding the purchase of the two immovable properties, the Assessing Officer treated the aforesaid investment in immovable property of Rs.1.19 crore as 'unexplained' and made out of undisclosed sources.

Thirdly, the Assessing Officer also noted an acquisition of immovable property in complex known as Universal Business Park, Mumbai. In terms thereof, the Assessing Officer noted that assessee had made payment of Rs.48,00,000/-, but here also, in the absence of any explanation, he treated the same as investment out of undisclosed sources. Therefore, in this manner, the Assessing Officer treated Rs.1,19,91,500/- + Rs.48,00,000/- totalling to Rs.1,67,91,500/- as income from undisclosed sources towards acquisition of immovable properties. Lastly, the Assessing Officer noted that assessee has given copies of agreement showing sale of agricultural land, but in the absence of any explanation, he treated the consideration reflected in four such agreements amounting to Rs.11,50,000/- to be assessable as Short Term Capital Gain.

6. The aforesaid additions were challenged by the assessee before the CIT(A) who has upheld the same primarily for the reason taken by the Assessing Officer. Not being satisfied with the order of CIT(A), assessee is in further appeal before us.

7. Before us, the learned representative for the assessee made a preliminary point to the effect that the fact-position in the present case has not been properly appreciated by the lower authorities. Explaining the additions, the learned representative pointed out that so far as the addition made on account of unexplained investment in properties of Rs.1,67,91,500/- is concerned, the same is made on account of two properties, namely, Universal Business Park and Kohinoor City Mall. With regard to Universal Business Park property, it was explained with reference to page 68 of the Paper Book that the same was purchased by six persons in

terms of sale agreement dated 05.05.2008 and assessee was one of the co-owners of the property. It was explained that the total consideration paid for the property was Rs.88,02,000/- and assessee's share was $1/6^{\text{th}}$. Subsequently, by way of agreement dated 18.08.2008, assessee acquired the share of the remaining co-owners of the property for a consideration of Rs.48,00,000/- and in this context, referred to pages 52 and 53 of the Paper Book, wherein is placed a copy of the relevant agreement. On this point, the learned representative referred to the registered agreement to point out that for the purpose of payment of stamp duty, the value of the property was taken at Rs.52,41,500/-. The learned representative pointed out that the Assessing Officer while making the addition added both the sums, namely, Rs.48,00,000/- as well as Rs.52,41,500/-, which is quite untenable. On the contrary, as per the assessee, the total application of funds made by the assessee for acquisition of the property was Rs.62,67,000/-, being Rs.48,00,000/- paid to the remaining co-owners plus Rs.14,67,000/- paid for $1/6^{\text{th}}$ share at the time of initial acquisition.

8. Secondly, even with regard to the addition made on account of Kohinoor City Mall property, the learned representative explained that the total consideration payable for the property was Rs.67,50,000/- in terms of the sale agreement dated 28.08.2008, copy of which has been placed in the Paper Book. It was pointed out that during the year under consideration, only part-payment of Rs.39,50,000/- was made and, therefore, the Assessing Officer erred in making an addition of Rs.67,50,000/- on this count. Further, assessee explained that the source of funds for acquisition of the properties was the sale consideration of agricultural land of Rs.1,21,66,500/-. Justifying the existence of consideration from sale of agricultural land, the learned

representative referred to an assessment made u/s 143(3) r.w.s. 147 of the Act for Assessment Year 2008-09, copy of which is placed at pages 226 to 299 of the Paper Book. The learned representative pointed out that as per the details noted by the Assessing Officer in Assessment Year 2008-09, the total consideration received was Rs.91,21,000/-. It was explained that such amount has been used by the assessee not only to make the payments for the aforesaid acquisition of properties, but also for the deposits in the bank account. The learned representative pointed out that evidently the Assessing Officer has erred in mechanically adding all the credits in the bank account as income of the assessee inasmuch majority of the amounts were out of sale of the agricultural land. After explaining the aforesaid fact-situation, the learned representative submitted that assessee would be satisfied if the matter is restored back to the file of the Assessing Officer to examine and verify the aforesaid contentions, which are otherwise borne out of material which have been placed in the Paper Book before us.

9. On the other hand, the Id. DR while not seriously opposing the plea of the assessee for remanding of the matter back to the file of the Assessing Officer, reiterated the assessment order wherein the impugned additions have been made. The manner in which the additions have been made by the Assessing Officer has been succinctly noted by us in the earlier paras and is not being repeated for the sake of brevity.

10. We have carefully considered the rival submissions. In the context of the submissions put forth by the assessee before us, we have perused the assessment order. Notably, the Assessing Officer records that the details called for by him were not fully furnished by the assessee and as the

assessment was becoming time barred, he proceeded to finalise the assessment on the basis of the material on record. The manner in which the additions have been made, for instance, *qua* the investment in properties, it shows that complete details were not before the Assessing Officer inasmuch as the addition on account of Universal Business Park property has been made seemingly twice; firstly, a sum of Rs.48,00,000/- representing the consideration paid; and, secondly, a sum of Rs.52,41,500/- representing the valuation adopted for the purpose of payment of stamp duty. The said inconsistency pointed out by the assessee is clearly borne out of the material placed in the Paper Book before us. Similarly, with regard to the investment in Kohinoor City Mall also, the plea of the assessee is that the entire stated consideration has not been paid in this year and that the addition has been made even for the sum which has not been actually paid in this year. Be that as it may, considering the entirety of circumstances, it is evident that the assertions made by the assessee involve appreciation of factual affairs, which deservedly should be done at the level of the Assessing Officer. Therefore, we accept the plea of the assessee for remanding the matter back to the file of the Assessing Officer for a *de novo* assessment. Accordingly, we set-aside the order of CIT(A) and restore the matter back to the file of the Assessing Officer who shall consider the submissions and material put forth by the assessee and only thereafter, pass an order afresh in accordance with law. Before parting, we may clarify here that our decision to remand the matter back to the file of the Assessing Officer should not be construed as any reflection on the merits of the case, which shall be dealt with by the Assessing Officer on the basis of the material and submissions made before him and in accordance with law.

11. The last Ground is against the levy of interest u/s 234A, 234B, 234C and 234D of the Act, which is consequential in nature, and no determination is required.

12. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on 15th June, 2018.

Sd/-
(RAVISH SOOD)
JUDICIAL MEMBER

Sd/-
(G.S. PANNU)
ACCOUNTANT MEMBER

Mumbai, Date : 15th June, 2018

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Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "A" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai