



ITA No.1177/Mum/2016
Shri Mohd. Farooq Sarang
Assessment Year-2010-11

आयकर अपीलीय अधिकरण "बी" न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, MUMBAI

श्री शक्तिजीत दे, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।
BEFORE SHRI SAKTIJIT DEY, JM AND
SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ I.T.A. No.1177/Mum/2016
(निर्धारण वर्ष / Assessment Year: 2010-11)

Shri Mohd. Farooq Sarang Flat No.302, Shabnam Apt. 33, S.V. Road, Andheri (W) Mumbai-400 058.	बनाम/ Vs.	DCIT-Central Circle-36 Mumbai.
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. AAFPS-3609-G		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से/ Appellant by	:	Shri Piyush Chhajed-Ld. AR
प्रत्यर्थी की ओर से/ Respondent by	:	Ms. Kavita P. Kaushik-Ld.DR

सुनवाई की तारीख/ Date of Hearing	:	26/09/2019
घोषणा की तारीख / Date of Pronouncement	:	04/10/2019

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member): -

1. Aforesaid appeal by assessee for Assessment Year [AY] 2010-11 contest the order of Ld. Commissioner of Income Tax (Appeals)-53, Mumbai, [CIT(A)], Appeal No. CIT(A)-53/DCCC-36/IT-83/13-14 dated 26/11/2015 on following grounds of appeal: -



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- 1) On the facts and circumstances of the case, the Id. Commissioner of Income Tax (Appeals) erred in confirming the addition of **Rs.6,64,000/-** as a Deemed Rent calculated on notional basis being 8% of the Book Value of the said properties.
- 2) On the facts and circumstances of the case, the Id. Commissioner of Income Tax (Appeals) erred in confirming the addition of **Rs.1,35,00,000/-** as an additional income without appreciating that the appellant had already filed the Revised Computation of Income and Return during the course of assessment making the correct claim.
- 3) On the facts and circumstances of the case, the Id. Commissioner of Income Tax (Appeals) erred in disregarding the Judgment of jurisdictional Bombay High Court in case of **Pruthvi Brokers & Shareholders, 349 ITR 336** wherein it has been held that Assessee is entitled to raise additional claims though not made in the original return filed by Assessee.
- 4) On the facts and circumstances of the case, the Id. Commissioner of Income Tax (Appeals) erred in confirming addition having accepted that the above income was erroneously included in the original return whereas no such income was earned by the Assessee during assessment year which is accepted by Assessing Officer.
- 5) On the facts and circumstances of the case, the Id. Commissioner of Income Tax (Appeals) had already filed the revised claims alongwith Computation of Income and Revised Return during the course of assessment and therefore should have been allowed as laid down by various judicial authorities.”

We have heard and considered rival submissions made before us and applied our mind to the issues under consideration.

2. Facts in brief are that the assessee being resident individual carrying on business under proprietorship concern namely M/s Hi-Tech Town Developers was assessed for year under consideration u/s 143(3) on 26/03/2013 wherein the income was assessed at Rs.152.50 Lacs after certain additions as against returned income of Rs.150.85 Lacs filed by the assessee on 12/11/2010. It is apparent that this return of income was filed belatedly u/s 139(4) and therefore, as per extant provisions of Section 139(5), this return could not be revised. Further, return filed u/s 139(1) could be revised before the expiry of one year from the end of relevant Assessment Year or before the completion of the assessment, whichever is



earlier. Accordingly, the limitation period to revise the return for AY 2010-11 expires on 31/03/2012.

3. During the course of assessment proceedings, the assessee vide letter dated 18/03/2013 furnished a revised return at Rs.17.28 Lacs which was rejected by learned AO since the original return was a belated return and also, the time limit for filing the return had already expired on 31/03/2012.

4. So far as the quantum additions are concerned, the assessee has been saddled with estimated addition of notional rental value against three properties. The said estimation, in line with estimation made in AY 2009-10, was taken to be 8% of value of the properties. The same worked out to be Rs.6.64 Lacs. After allowing statutory deduction of 30%, the net addition made in the hands of the assessee amounted to Rs.4.64 Lacs. The said addition was confirmed by first appellate authority in impugned order dated 26/11/2015, against which the assessee is under appeal before us with ground no.1. The Ld. AR has urged that the benefit of one self-occupied property should be allowed to the assessee. After due consideration, we find that the estimations are in line with AY 2009-10, against which the assessee is already in further appeal. Accordingly, we direct Ld. AO to adopt the notional rental value as per estimation finally made & confirmed in AY 2009-10. Ground No.1 stand restored back to the file of Ld. AO, for the said purpose and accordingly, the same may be treated as allowed for statistical purposes.



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5.1 The assessee also contested the rejection of revised return as well as computation of income filed during the course of assessment proceedings in first appeal. The assessee explained that pursuant to search operations on assessee u/s 132 on 24/02/2009, notices u/s 153A were issued to the assessee for AYs 2003-04 to 2009-10 and the assessment for these years was framed by Ld. AO on 27/12/2010. In the meantime, the assessee filed return of income for AY 2010-11 on 12/11/2010 i.e. before the completion of assessment declaring income at Rs.150.85 Lacs. It was submitted that while filing the return, a disclosure of Rs.135 Lacs pertaining to earlier years was inadvertently included in the return for AY 2010-11 without realizing that there was no disclosure to be made for AY 2010-11. It was only during the course of scrutiny assessment proceedings that the mistake was noted which was sought to be rectified by filing revised return as well as revised computation of income vide letter dated 18/03/2013.

5.2 However, the learned CIT(A) noted that the assessee substantially retracted the disclosure of additional income for AYs 2008-09 and 2009-10 and did not pay the due taxes as per return of income for these years. In other words, the assessee did not honor the disclosure of additional income of Rs.8.08 Crores offered by him u/s 132(4) of the Act.

5.3 Finally, not convinced, the aforesaid plea was rejected keeping in view the limitation period as applicable to revised return of income. The case laws being relied upon by the assessee were found to be not applicable to the year under consideration. Reliance placed by the assessee on the decision of Hon'ble Bombay High Court rendered in **Pruthvi Brokers &**



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Shareholders 349 ITR 336 in support of additional claim was also rejected by observing that when a particular act or power could not be done / exercised directly by an authority, the same could not be done indirectly under the garb of directions of an authority. Since the assessee could not revise return as per Section 139(5), the additional claims filed in revised return during assessment proceedings could not be entertained. Accordingly, this ground of appeal as rejected, against which the assessee is under appeal before us.

6. Upon due consideration, the bench is of the considered opinion that the same income could not be taxed twice. Further, as per the mandate of Article 265 of the constitution, no tax is to be levied or collected except by the authority of law. Acquiescence could not take away from a party the relief that he was entitled to where the tax is levied or collected without the authority of law. Keeping in view the said principle, if the stated income pertained to earlier years and no disclosure was made for the year under consideration, the inclusion of the same, under mistake, could not be held to be justified. The revenue could not derive benefit out of inadvertent mistake committed by the assessee. Our view is duly supported by the cited decision of Hon'ble Bombay High Court which has held that appellate authorities had adequate powers to entertain new / additional claims raised by the assessee for the first time. Therefore, we admit the claim and restore the matter back to the file of Ld.AO to verify the assertions made by Ld. AR, before us. If the disclosure is included by way of inadvertent mistake, the



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assessee would be entitled for exclusion of the same. Ground Nos. 2 to 5 may be treated as allowed for statistical purposes.

7. Resultantly, the appeal stands allowed for statistical purposes.

Order pronounced in the open court on 04th October, 2019.

Sd/-
(Saktijit Dey)

न्यायिक सदस्य / **Judicial Member**

मुंबई Mumbai; दिनांक Dated : 04/10/2019

Sr.PS:-Jaisy Varghese

आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त/ CIT- concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai.