

IN THE INCOME TAX APPELLATE TRIBUNAL  
“G” BENCH, MUMBAI

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER &  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 4546/Mum/2014  
(A.Y: 2009-10)

Shamsher Hussain W Shaikh, 7/442, Gajanan Colony, Gowandi, Mumbai – 400043.	Vs.	ITO – 21(3)(2) Bandra, Mumbai.
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PAN/GIR No. : AHZPS4905Q		
(Appellant)	..	(Respondent)

Appellant by :	Shri V.K Tulsian, AR
Respondent by :	Smt. Sailaja Rai, Sr. DR

Date of Hearing	25/03/2021
Date of Pronouncement	31/03/2021

ORDER

**PER PAVAN KUMAR GADALE, JM:**

The assessee has filed the appeal against the order of the Commissioner of Income Tax (Appeals) - 32, Mumbai, passed u/s. 143 (3) and 250 of the Income Tax Act, 1961. The assessee has raised the following grounds of appeal:-

1. *The Ld. AO erred in making an addition of Rs. 27,13,005/- without any evidence of investment over and CIT(A) erred in confirming the same.*

2. *The Ld. AO has erred in making an addition of Rs. 27,13,005/- and the Ld. CIT(A)-32 erred in confirming the same inspite of the judgment of Supreme Court in the case of KP Varghese 131 ITR 597, without appreciating the fact that the absence of any evidence of investment made over and above the agreement value no addition can be made.*

3. *The assessee craves to add, alter, amend or delete any of the above ground of appeal””.*

2. At the time of hearing, the Ld. Counsel for the assessee submitted that there is a delay in filing the appeal before the Hon'ble Tribunal and filed the condonation petition. Contra, Ld. DR has no specific objections. We found the facts mentioned are reasonable and accordingly condone the delay and admit the appeal.

3. The Brief facts of the case are that, the assessee is an individual and filed return of income for the A.Y 2009-10 on 31.03.2010 with total income of Rs. 1,41,216/- and the return of income was processed u/s 143(1) of the Act. Subsequently, the case was selected for scrutiny and notice u/s 143(2) and 142(1) of the Act were issued, but there was no proper response to the notices and the A.O has initiated penalty proceedings u/s 271(1)(b) of the A.O. The A.O found that as per the AIR information of the assessee, there exists

a transaction of immovable property value of Rs. 44,45,750/- The A.O. has called for the details of immovable property and date of acquisition and other details, but there was no response from the assessee. But as per the enquires made by the A.O. it was found that the assessee has purchased the property for a consideration of Rs. 24,75,225/- whereas the market value was Rs. 44,46,750/-.Subsequently, the Ld.AR of the assessee attended on 17.10.2011 and submitted the copy of the purchase agreement of the property entered by the assessee. The A.O. has called for the bank statements and details of all the immovable properties held by the assessee but there was no compliance. The A.O has provided final opportunity to the assessee by show cause letter issued on 27.10.2011 referred at page -3 of the order. But the assessee has not filed any explanations or furnished the details. Finally the A.O. has made an addition of Rs. 27,13,005/- being cost of property, stamp duty and registration charges as undisclosed investment in the property and assessed the total income of Rs. 28,54,220/- and passed order u/s 143(3) of the Act on 03.12.2011.

3. Aggrieved by the order, the assessee has filed an appeal with the CIT(A), the CIT(A) considered the grounds of appeal and findings of the A.O and dealt on the disputed issue. The Ld.AR of the assessee has filed a letter dated 10.05.2012 along with the affidavit, summary of payments made for the flat, year wise payments and photocopies of the receipts and the same were not produced before the A.O. After considering the submission of the assessee, the CIT(A) has applied Rule 46A(3) of IT Rules and forwarded the documents to AO for his report and letter was marked to the assessee to appear before the A.O. to enable to make necessary investigations. Subsequently, remand report was forwarded by the A.O by letter dated 18.10.2013 referred at para 3.3 of the CIT(A) order. Whereas the CIT(A) has forwarded copy of remand report to the assessee, in compliance to the remand report the assessee has filed a letter and filed copy of HDFC bank statement with submissions referred at para 3.4 of the CIT(A) order. The CIT(A) found that the assessee has only submitted facts but never provided the complete information. Further in spite of providing opportunities in the assessment proceedings and remand proceedings before the Assessing officer the assessee has not complied. Even before the CIT(A), the

assessee has not submitted the details or furnished the clarifications as referred at para 3.5 of the CIT(A) order. Under these circumstances, the CIT(A) has confirmed the action of the assessing officer and dismissed the assessee appeal. Aggrieved by the CIT(A) order, the assessee has filed an appeal with the Hon'ble Tribunal.

4. At the time of hearing, the Ld. AR of the assessee submitted that the assessee was not provided proper opportunity and the CIT(A) has erred in not considering the evidences in respect of the property which was purchased by the Assessee. Contra, the Ld. DR supported the order of the CIT(A).

5. We heard the rival submissions and perused the material on record. Prima-facie, the only crux of the issue is with regard to addition made by the A.O. based on AIR information that the assessee has made investment in the property, whereas there was a difference in the market value and therefore made an addition of Rs. 27,13,005/- towards the investments. But the fact remains that the assessee either before the AO or the CIT(A) has not complied with the directions. Even the Ld.CIT(A) has made specific observations that the assessee has not explained

the reasons and not filed the information before the A.O. We found that the assessee has filed the details before the Hon'ble Tribunal mentioning that the same were filed before the A.O, but the fact remains that this information is not on record with the A.O. and there are no observation of the A.O. on these documents. Considering the overall facts provisions of law and to meet the ends of justice. We provide one more opportunity of hearing to the assessee to substantiate the case with evidences. Accordingly, we restore this disputed issue to the file of AO for limited purpose for verification and examination and the assessee should be provided adequate opportunity of hearing. The assessee should co operate in furnishing the information and we allow the grounds of appeal of the assessee for statistical purposes.

7. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 31.03.2021.

Sd/-  
(SHAMIM YAHYA)  
**ACCOUNTANT MEMBER**

Sd/-  
(PAVAN KUMAR GADALE )  
**JUDICIAL MEMBER**

Mumbai, Dated 31.03.2021

KRK, PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)
4. Concerned CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

( Asst. Registrar)  
ITAT, Mumbai