

आयकर अपीलीय अधिकरण
मुंबई पीठ "एस एम सी", मुंबई
श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER
आअसं. 6545/मुं/2019 (नि.व 2010-11)
ITA NO.6545/MUM/2019(A.Y 2010-11)

Shri Uday Abhaji Sathe,
4/3 Runanu Bandh, 4th Lane,
Rajaji Path, Dombivali East – 421 201.

PAN: AAOPS-2170-F

..... अपीलार्थी /Appellant

बनाम Vs.

Income Tax Officer ,
Ward 3(3)-Kalyan,
Rani Mansion, 2nd Floor,
Murbad Road, Kalyan – 421 301.

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri N.A. Kulkarni

प्रतिवादी द्वारा/Respondent by : Shri Kishore Dhule

सुनवाई की तिथि/ Date of hearing : 24/06/2022

घोषणा की तिथि/ Date of pronouncement : 24/06/2022

आदेश/ ORDER

This appeal by the assessee is directed against the order of Commissioner of Income Tax(Appeals) -1, Thane [in short 'the CIT(A)'] dated 25/09/2019 for the assessment year 2010-11.

2. The assessee in appeal has raised grounds assailing:

(i) rejection of Books of Account and estimation of profit @ 5% under section 44AF of the Income Tax Act, 1961 [in short 'the Act'];

(ii) addition of Rs.21,00,000/-.

Shri N.A. Kulkarni appearing on behalf of the assessee submitted at the outset that during the course of assessment proceedings and even during First Appellate proceedings, the assessee could not place on record copy of the registered sale agreement dated 07/10/2009 as the original agreement in respect of property sold by the assessee i.e. Unit No.321 admeasuring 460 sq.fts at Parvati Industrial Estate, Lower Parel, Mumbai was in possession of the purchaser, therefore, the same could not be placed on record. The aforesaid document is necessary for proper adjudication of the issue raised by the assessee in ground No.2 & 3 of the appeal. The Id.Counsel for the assessee further submitted that the assessee is placing on record bank loan account certificate and interest certificate to substantiate that the assessee had taken loan for acquiring the property. Though the aforesaid certificates were available with the assessee but inadvertently the assessee failed to placed on record the certificates from bank to substantiate its plea. The Id.Counsel for the assessee prayed for admission of the additional evidences.

3. Per contra, Shri Kishore Dhule representing the Department vehemently defended the impugned order and prayed for dismissing the appeal of assessee on merits. The Id.Departmental Representative submitted that the assessee had sold property for Rs.53.00 lacs. While computing short term capital gains on sale of property it was noted by the Assessing Officer that assessee has shown addition in asset amounting to Rs.21.00 lacs during the year. However, no documentary evidence was placed on record to substantiate the addition. The assessee has offered less short term capital gain as has been observed in the assessment order and upheld by the CIT(A). However, with regard to additional evidence filed by the assessee the Id.Departmental Representative has not raised any serious objection except for

that the additional evidence now filed by the assessee be made available to the Assessing Officer for verification and examination.

4. Both sides heard. The assessee at second appellate stage has filed additional evidence to substantiate its plea against the addition of Rs.21.00 lacs. Without commenting on merits of the issue, I deem it appropriate to restore this issue back to the file of Assessing Officer for denovo adjudication after considering the additional evidences filed by the assessee. Consequently, ground No.2 and 3 are allowed for statistical purpose.

5. In so far as objection regarding rejection of Books of Account raised in ground No.1 of the appeal, no meaningful submission was made by the Id.Counsel for the assessee. The Id.Counsel for the assessee has not been able to controvert the findings of authorities below hence, ground No.1 of appeal is dismissed being devoid of any merit.

6. In the result, appeal by assessee is partly allowed for statistical purpose.

Order pronounced in the open Court on Friday the 24th day of June, 2022.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated 24/06/2022
Vm, Sr. PS (O/S)

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai