

**IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, MUMBAI**

**BEFORE SHRI PRAMOD KUMAR, VP &
SHRI AMIT SHUKLA, JM**

आयकरअपीलसं./ I.T.A. No. 6364/Mum/2018
(निर्धारणवर्ष / Assessment Year: 2013-14)

DCIT, Circle-4(1)(2), R. No. 642, 6 th Floor, Aayakar Bhavan, M. K. Road, Mumbai-400 020	बनाम/ Vs.	Mayank Jashwantlal Shah, 'A' Aidun Building, 1 st Dhobhi Talao, John Crasto Lane, Mumbai-400 002
स्थायीलेखासं ./जीआइआरसं ./PAN No. AAHPS3906Q		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

&

Cross Objection No. 247/Mum/2019
(निर्धारणवर्ष / Assessment Year: 2013-14)

Mayank Jashwantlal Shah,	बनाम/ Vs.	DCIT, Circle-4(1)(2),
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)
अपीलार्थीकीओरसे/ Appellant by	:	Shri R. P. Rastogi, Ld. DR
प्रत्यर्थीकीओरसे/ Respondent by	:	Shri Hiro Rai, Ld. AR
सुनवाईकीतारीख/ Date of Hearing	:	14.06.2022
घोषणाकीतारीख / Date of Pronouncement	:	27.06.2022

आदेश / O R D E R

Per Amit Shukla, Judicial Member:

The aforesaid appeal filed by the revenue and cross objection filed by the assessee against the order dated 28.08.2018 passed by Ld. CIT(A)-9, Mumbai for the quantum of assessment passed u/s

143(3) for AY 2013-14. The revenue has raised the following grounds of appeal:-

1. *"On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in directing the A.O to assess the deemed rent for only two months i.e. February & March-2013 without appreciating the fact that assessee has taken virtual possession of property by making the last payment in December, 2011 and failed to establish that he occupied the said property from February 2013."*

2. *"On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in restricting the deemed rent from @ 9% to 7% of investment value without appreciating the fact that the assessee has failed to submit any evidence to show the municipal rateable value of property."*

3. *"On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the interest income of Rs.6,27,35,854/- without appreciating the fact that as per 26AS interest of Rs.9,18,42,789/- was credited in the PAN of assessee and TDS is deductible in the hands of assessee. "*

4. *"On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the interest income of Rs.6,27,35,854/- without appreciating the fact that interest of Rs.9,18,42,789/- was credited in the PAN of assessee and*

assessee has failed to comply with the statutory requirement of 26AS. "

5. The appellant craves leave to amend or alter any ground or add a new ground which may be necessary."

2. Whereas assessee has filed Cross Objection on the following grounds:-

1. The Ld. Commissioner of Income Tax (Appeals)- 9, Mumbai [hereinafter referred to as "Ld. CIT(A)"] erred in passing the order dated 28.08.2018 partially upholding the action of the Ld. A.O. in making addition of Rs.28,44,981/- under the head Income from House Property under section 22 of the Act without appreciating the facts and circumstances of the case. The Cross Objector, therefore, prays that the order passed by Ld. CIT(A) is bad in law.

2. The Ld. CIT(A) failed to appreciate that the residential flat at JVPD spread over four consecutive floors constitute one single residential unit, having internal staircase, common kitchen etc. Thus, the four flats owned by the Cross Objector represents one residential house which is self occupied property eligible for exemption under section 23(2) of the Act. The Cross Objector, therefore, prays that the addition of Rs.28,44,981/-by invoking the provisions of Section 22 of the Act is not at all justified. Hence, the same may be deleted.

3. The brief facts of the case are that, assessee is an individual declared income from house property and income from other sources. Ld. AO noted that during the assessment year, a new building was registered in the name of assessee and other family members which comprises of 11 floors with refuge floor on the 7th floor. He also noted that different floors in the building have been purchased by the assessee and his family members. The details of which are as under: -

<i>S. No</i>	<i>Name of the buyer of the property and his assignee no.</i>	<i>Description of the residential floor purchased</i>	<i>Share in the total undivided land</i>	<i>Total purchase consideration paid</i>
1.	<i>Mayank. J. Shah, Assignee- 1</i>	<i>8th, 9th, 10th and 11th floors</i>	40%	41,24,40,000
2.	<i>Shreyans.J.Shah, Assignee-2</i>	<i>5th and 6th floors</i>	20%	20,62,20,000
3.	<i>JaswanLS.Shah, Assignee-3</i>	<i>3rd and 4th floors</i>	20%	20,62,20,000
4.	<i>Manglaben. J. Shah, Assignee-4</i>	<i>1st and 2nd floors</i>	20%	20,62,20,000

4. The different owners/family members have treated their respective floors as one unit and assessee has treated 8th, 9th, 10th

& 11th as one unit. Ld. AO has treated every floor as one unit and held that for the calculation of ALV, every floor has to be treated as separate residential unit under the Income Tax Act, accordingly assessee is eligible for claiming only one property as 'Self Occupied Property' u/s 23 and all other house property, the ALV has to be calculated. Accordingly, AO calculated ALV of other 3 floors @ 9% of the investment in such house property. Hence, AO treated ALV at Rs. 3,13,52,856/- and after allowing deduction u/s 24, the resulted income was computed at Rs. 2,19,47,000/-

5. Ld. CIT(A) noted that all the 4 floors were joined as one residential with internal stair and one main kitchen with internal lifts. However, Ld. CIT(A) has rejected the said contention that assessee could not prove that all the 4 floors constituted one single residential unit. He held that assessee has used for property as residential only for 2 months in the relevant assessment year, whereas AO has assumed the property that use for whole of the financial year as the last payment was made in December 2011. Ld. CIT(A) also noted as per the purchase agreement that the residential premises was 'in semi finished condition' and it was not

habitable for living purposes. Accordingly, he computed the ALV for 2 months and reduced the estimation of ALV @ 9% to 7%.

6. At the outset, Ld. Counsel for the assessee Mr. Hero Rai submitted that this issue had come up for consideration before this Tribunal in the case of brother of co-owner of the assessee **Shri Shreyans Jashwantlal Shah in ITA No. 6365/Mum/2018 & CO-229/Mum/2019 vide order dated 03.05.21** wherein the Tribunal has set aside this issue to the file of AO after observing as under:-

9. We have considered rival submissions and perused materials on record. The specific dispute arising for consideration is, whether the property at 'Mayfair JVPD 1 Building' is a single residential unit or two separate and independent flats. On a perusal of facts and materials on record including the registered sale deed dated 23-05-2012, a copy of which is at page 13 of the paper book, the crucial facts which emerge are, the land on which the 'Mayfair JVPD 1 Building' is situated was a multi-storied building of 11 floors with apartments. The said property was owned by one Nayan Arvind Shah. Subsequently, the entire property was sold to four individuals including the present assessee. As it appears from the facts on record, the earlier owner developed the multi-storey building only to the extent of civil construction, whereas, the interior decoration was done by the purchasers. As per description of the

property mentioned in schedule to the sale deed, each of the co-owners including the assessee got a residential unit in adjacent floors having carpet area of 3,570 sq. ft. inclusive of internal staircase and internal lift as well as enclosed balcony. Thus, from the description of the property, in the sale deed, assessee's contention that it is a single residential unit, "prima facie, appears to be correct. In that event, the claim of the assessee that the property being a SOP no deemed annual letting value can be charged, is acceptable.

10. However, learned Commissioner of Income-tax (Appeals) while rejecting assessee's claim has observed that no supporting evidence has been filed by the assessee to substantiate his claim that it is a single residential unit. In view of the aforesaid, we restore the issue to the assessing officer for the limited purpose of factually verifying assessee's claim that the property spread over two adjacent floors is a single residential unit having internal staircase, common kitchen, etc. If the evidences furnished by the assessee bring out such fact, then the assessing officer should treat the entire property as SOP and allow the statutory deduction as claimed by the assessee. Grounds are allowed for statistical purposes.

10. In the result, revenue's appeal is dismissed and cross objection of the assessee is allowed for statistical purposes.

7. On the other hand, Ld. DR also submitted that the matter be restored back to the file of AO in line with the direction of Tribunal.

8. From the perusal of aforesaid Tribunal order in the case of other co-owner residing in 5th & 6th floor in the same building which was treated as single unit, the Tribunal has remanded back to the file of AO to verify the assessee's claim that property was spread over to adjacent floor which here in this case are 4 adjacent floor is a single residential unit or not. In line with the same direction, we also remand this issue for the limited purpose to the file of AO to verify the assessee's claim that 4 adjacent floor are one single unit or not. Accordingly, ground no. 1 & 2 raised by the revenue and assessee are treated as **allowed for statistical purposes**.

9. In so far as ground no. 3 & 4 raised by the revenue, it has been admitted by both the parties that this issue is covered by the order of Tribunal in assessee's own case for Ay 2012-13 in ITA No. 3919/Mum/2017 vide order dated 05.03.2021.

10. In brief facts qua the issue are that, assessee along with other family members & group concerns sold the shares held by them in

Biochem Pharmaceutical Industries Ltd. to Cadilla Health Care Limited under a 'Share Purchase Agreement' dated 21.12.2011, a copy of which is in records. Further, in terms of said Share Purchase Agreement, a 'Net Working Capital and the Indemnity Escrow Agreement' dated 26.12.2012 was also signed between the Sellers, the Company - Biochem Pharmaceutical Industries Ltd., ICICI Bank Ltd. as 'Escrow Agent', and the Purchaser - Cadilla Healthcare Limited. A copy of said agreement is also on records. As per said Escrow Agreement, the Escrow Agreement is opened with ICICI Bank in the name of "Mr. Mayank J. Shah (Networking Capital and Indemnity) Escrow Account", which shows that the same is opened in name of assessee. The total amount deposited in said escrow account by the purchasers is at Rs. 85.56 crore. During the year, total interest of Rs. 4,62,36,300/- is computed to have been received on said Escrow account, out of which Interest of 92,47,260/- (i.e. in proportion to 20% shareholding of assessee) has been offered to tax by the assessee, and the balance Rs. 3,69,89,040/- has been disbursed to other six parties in their profit-sharing ratio. The party-wise break-up of such interest in

ratio of shareholding of these persons was submitted by the assessee during assessment proceedings, as reproduced on page 25 of assessment order. The AO observed that nowhere in the Escrow agreement, it is mentioned that the amount of interest accrued and received by Shri Mayank J. Shah would be divided and distributed among any other person. The AO relied upon the decision of Hon'ble Delhi High Court in the case of **CIT vs. Shivraj Gupta**, wherein it was held that the assessee, having chosen the taxable event, i.e. to receive the entire sale consideration in his name, must therefore bear and face the tax consequence.

11. Accordingly, AO has disallowed the interest at Rs. 6,27,35,854/-. AO further noted that assessee has received total interest of Rs. 7,19,83,064/- as per the AIR statement and asked the assessee to reconcile the same from Form No. 26-AS. In his explanation, assessee stated that he has received an amount of Rs. 2,57,46,764/- on account of interest accrued and liability payable to M/s Cadilla Healthcare Ltd. However, AO did not accepted the same and held that nowhere in the Escrow agreement, it is mentioned that interest accrued and received by Shri Mayank J.

Shah would be divided and distributed among any other person. After detail discussion, AO held that the entire interest received by the assessee including amount received from Escrow account would be taxable in the hands of the assessee. Accordingly, addition made on interest of Rs. 6,27,35,854/-.

12. Ld. CIT(A) held that amount kept in escrow account to meet the various unforeseen liabilities in future to be borne by the sellers cannot be treated as assessee is beneficial owner of the entire amount, even though the escrow bank account was opened in the name of assessee. He also noted that all other shareholders have offered the share interest received from the escrow account at a maximum marginal rate, so taxing the net amount in the hands of the assessee is untenable as the same would be a double taxation. He further held that the entire amount of interest of Rs. 7.19 crores as reflected in Form 26S stands actually shown by the different persons in the return of income, therefore any addition disallowed in the hands of the with regard to income shown by the other persons cannot be justified. Accordingly, he deleted the entire interest which was added by the AO.

13. We find that the Tribunal has decided this issue in favour of the assessee in assessee's own case for AY 2012-13 in ITA No. 3919/Mum/2017 after observing and holding as under:-

4. We have heard rival contentions and gone through the facts and circumstances of the case. We noted that the assessee, his family members and group concerns totally held 100% stake in company Biochem Pharmaceutical Industries Ltd. The said company was taken over by Cadila Health Care Limited under a Share Purchase Agreement dated 21.12.2011, pursuant to which the shares of the assessee, his family members were purchased. In terms of the Share Purchase Agreement, a Net Working Capital and the indemnity Escrow Agreement" dated 26.11.2012 was signed between the Sellers (the Assessee, his family members and group company stake holders of Biochem), the Company - Biochem Pharmaceutical industries Limited, ICICI Bank Ltd as "Escrow Agent" and the Purchaser-Cadila Healthcare Limited. As per this Escrow Agreement -escrow account was to be opened with the Escrow Agent in the name of "Mr. Mayank J. Shah (Networking Capital and Indemnity) Escrow Account" for depositing following amounts to be utilized for the purpose of, (a) Net working capital and net debt adjustments and (b) Indemnifying the Sellers from any losses that may be suffered from Pending Actions from Revenue authorities, Sellers' breach of warranties given, Tax Assessments; non-receipt of valued added/sales tax forms, settling

any claims made by the Purchasers against the Sellers etc. Whereas the escrow amounts were to be deposited in designated bank account, the same may be placed in permitted investments agreed by the Parties. The earnings from the investments (say interest on fixed deposits) with bank was to be distributed from time to time between the Sellers and the Purchasers based on whether - the amount kept in the Escrow Account was discharged for meeting the indemnities or refunded to the Buyers - If the indemnities were not required. The proportion, in which the earnings from the Escrow investments was to be disbursed to the beneficiaries was to be agreed between the Sellers and the Purchasers. The Escrow Account was withheld by the Purchaser from the Individual sale considerations payable to the Sellers and placed in the Escrow. The copies of the Share Purchase Agreement and the Escrow Agreement were furnished to the Assessing Officer in the course of the assessment proceedings. Tax was deductible by the Escrow bank from the interest payable on fixed deposits kept. As per Escrow Agreement, the TDS certificate was to be issued in name of the assessee. This was more particularly so because the exact amount of interest payable to each Seller or the Purchaser was a matter of agreement between the Sellers and the Purchasers and the Escrow Bank had nothing to do with the inter-se allocation of interest between the Sellers and the Purchaser. It was for this reason; the fixed deposit receipt was issued in the name of "Mr. Mayank J. Shah- Biochem (Networking Capital and Indemnity Escrow Account for convenience".

5. We noted that in response to query raised by the Assessing Officer, the assessee has given the details of Escrow Deposit, the interest earned and the disbursement of interest to Cadila Health Care, his family members and group concern stake holders. The details have been reproduced by the Assessing Officer in the assessment order. The assessee explained to Assessing Officer that all the beneficiaries of the interest incomes have declared the same in their individual returns of income and offered the same for tax. The copies of these returns with computations of incomes were also furnished by the assessee before the AO as well as before the CIT(A) and even now before us. The Assessing Officer clearly missed out on a simple principle that if the funds for investment have emanated from one person, then logically the income from the investments belong to that person only and he only must be assessed to tax on that income. If the income is received by another person on his behalf such a person is only a collector of the income and not the owner. The income is to be assessed in the hand of the real owner and not the fiduciary holder. The fiduciary holder is mere a nominal holder (holder in name) and not the beneficial holder. In the instant case of the assessee, one needs to understand how the Escrow scheme operated and the logics behind its operation.

6. In view of these facts, now we will discuss the facts of this case in the first place. The assessee, his family members and their group concerns held 100% stake in Biochem Pharmaceutical

Industries Limited. The company and its business were to be taken over by Cadila Healthcare Ltd by purchase of the 100% shares. The consideration for purchase of shares in such event is worked out by making a valuation of the assets and its liabilities. The purchase price is thus fixed by valuing the net worth of the company- assets minus liabilities. There is always an apprehension in mind of the purchaser that further liabilities may arise which has not been provided in books of accounts. Therefore, when a price is struck between the purchaser and seller for transfer of shares in company based on a net worth perception of the business taken over, the price is made subject to a rider that - further liabilities relating to the period when the seller owned the company surface In future, the incremental liabilities have to be reimbursed by the seller. Some estimation is made by the seller and the buyer of this probable incremental liabilities and an amount to the extent of this estimate is placed by the seller in escrow account If any such liability arises in the future, this is discharged from the escrow account and if the liability does not arise, the amount in escrow is reimbursed to the seller. The escrow funds are parked in some income earning investments in the meantime- say in fixed deposits with banks. There will naturally be interest receivable on the investments. As to whom the interest received has to be paid- whether the seller or the buyer will depend on whether the liability arises or not If the liability arises, then the interest has to be paid to the buyer because the fund in the escrow is as good as that of the buyer and not the seller. If the liability does not arise, the funds

in the escrow can be said to belong to the seller only and the interest has to be paid to him. In assessee's case, it is on these above principles that interest on escrow, investments was payable either to Cadila Health Care (the buyer) or the assessee's group (the seller). A reading of the escrow agreement will bring out these principles. The escrow account and fixed deposits have to be kept in name of some legal entity. It cannot be kept in name of the escrow scheme. To enable this, the fixed deposit was kept in the name of the assessee for convenience with a suffix of the escrow account nomenclature i.e. "Mr. MayankJ. Shah - Biochem (Net Working Capital and Indemnity) Escrow Account".

7. Now, tax has to be deducted at source by the escrow banker from the interest paid on fixed deposits and this will mean that a tax deduction certificate has to be issued by the bank as to who is the ultimate beneficiary of the interest - whether Cadila Health Care or the assessee group members- is call to be taken by Cadila and the assessee group. The escrow banker has no say in this or will it embark on a roving enquiry for this purpose. Its job is to deduct tax at source as per law and pay Inc the government treasury. As per law, it is supposed to issue the TDS certificate in the name of the person on the Fixed Deposit receipt. As seen earlier, the FDR was kept in name of Mr. Mayank J Shah.

8. In view of these facts, we are of the view that the AO as well as CIT(A) erred in holding that the entire interest belongs to assessee whereas, the assessee has passed on its share in proportion to the

actual beneficiaries. It is only the assessee's family members and group entities who have received the interest through the assessee and passed it to its real owner.

9. The assessee has filed complete details before the AO and AO after going through the details of interest as is mentioned in letter dated 05.10.2016 filed before Pr.CIT, the AO framed the assessment originally. The PCIT without looking into these details passed Revision Order for verification purpose only. Even in AY 13-14, i.e. immediately succeeding year in assessee's own case the CIT(A) allowed the claim of the assessee in regard to distribution of proportionate interest received on account of Cadila Health Care Limited as well as Biochem Pharmaceutical industries Limited. Even the same Assessing Officer framed assessment in the hands of the assessee's brother Shri Sheyans Jaswantlal Shah while framing assessment under section 143(3) of the Act for AY 2012-13 and accepted the interest declared in the returned of income. Hence, we are of the view that the assessment framed by AO originally, under section 143(3) of the Act dated 30.01.2015 is neither erroneous nor prejudicial to the interest of the Revenue. Even on facts as discussed above, the assessee has rightly disclosed the interest proportionately in its returned of income for the relevant AY 2012-13. Hence, the Revision Order passed by PCIT is set aside and the appeal of the assessee is allowed.

10. In the Result, the appeal of assessee is allowed.

14. Therefore, following the aforesaid order of the Tribunal on similar facts, we hold that interest has rightly been deleted by Ld. CIT(A). Accordingly, the ground No. 3 & 4 raised by the revenue stands **dismissed**.

15. In the result, the appeal filed by the revenue and CO filed by the assessee are **allowed for statistical purposes**.

Orders pronounced in the open court on 27th June 2022.

Sd/-
 (Pramod Kumar)
 Vice President

Sd/-
 (Amit Shukla)
 Judicial Member

मुंबई Mumbai;दिनांक Dated : 27.06.2022
 Sr.PS. Dhananjay

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai