

THE INCOME TAX APPELLATE TRIBUNAL
“B” Bench, Mumbai
Shri B.R. Baskaran (AM) & Smt. Kavitha Rajagopal (JM)

I.T.A. No. 3144/Mum/2014 (A.Y. 2005-06)
I.T.A. No. 3143/Mum/2014 (A.Y. 2004-05)

Narendra Mohan K. Singh Tarang Bunglow, 13 Golf Link Estates, Union Park Pali Hill, Near Satrang Bandra West, Mumbai-50. PAN : ARIPS5027L (Appellant)	Vs.	ITO-21(1)(3) Mumbai (Respondent)
---	-----	--

Assessee by	Shri Satish R. Mody
Department by	Shri Chetan M. Kacha
Date of Hearing	11.07.2022
Date of Pronouncement	15.07.2022

ORDER

Per B.R.Baskaran (AM) :-

Both these appeals filed by the assessee are directed against the orders passed by learned CIT(A)-32, Mumbai and they relate to A.Y. 2004-05 & 2005-06. Both these appeals were heard together and are being disposed of by this common order, for the sake of convenience.

2. The assessee is an individual and is deriving income from salary, business and profession and other sources. The assessment for both the years was reopened by issuing notice under section 148 of the I.T. Act. The Assessing Officer completed the assessment by making various additions and appeals filed by the assessee before learned CIT(A) were partly allowed. Still aggrieved, the assessee has filed these appeals before us.

3. We shall first take up the appeal filed for A.Y. 2004-05. Ground No. 1 & 2 relate to validity of reopening of assessment. We noticed that the assessee did not press these grounds before Ld CIT(A) and hence these grounds were

dismissed by learned CIT(A) as not pressed. As the assessee has already not pressed these grounds before Ld CIT(A), we dismiss both these grounds.

4. Ground No. 3 relates to addition of Rs. 3 lakh relating to alleged undisclosed cash. At the time of hearing, learned AR did not press this ground. Accordingly it is dismissed as not pressed.

5. Ground No. 4 relates to addition of Rs. 6 lakh on account of low personal withdrawals.

6. The facts relating to the issue are that the Assessing Officer noticed that the assessee has not withdrawn money for his personal expenses. The assessee had withdrawn a sum of Rs.2,48,850/- from his bank and claimed the same to be used for personal expenses. The AO noticed that these withdrawals were found to have been used to make payment to BSES, BPL, Reliance and MTNL etc. Accordingly, the AO took the view that the assessee has not withdrawn any money for personal expenses. Accordingly, the Assessing Officer estimated personal expenses at Rs. 50,000/- per month and accordingly added sum of Rs. 6 lakhs to the income of the assessee on account of domestic expenses.

7. Before learned CIT(A), the assessee contended that there was no basis for the Assessing Officer for estimating domestic expenses @ Rs. 50,000/- per month. It was submitted that the assessee was a bachelor in that year and he living with his parents. The Learned AR submitted that the assessee is a pilot and mostly he was travelling on company expenses. It was submitted that the assessee has withdrawn a sum of Rs. 2,41,850/- for his personal expenses only.

8. The Learned CIT(A) noticed that the withdrawal of Rs. 2,41,850/- was used to pay electricity bills and telephone bills. He took the view that the high electricity and telephone bills would show his high standard of living,

Accordingly, the Ld CIT(A) confirmed the addition made by the Assessing Officer.

9. The Learned AR submitted estimate of Rs. 50,000/- per month is on the higher side. The Learned AR further submitted that the Assessing Officer has not brought any material on record in support his estimate. He submitted that the assessee was living with his parents, since he was a bachelor at that point of time. He has also withdrawn about Rs.2.40 lakhs from his bank account, which would be sufficient for a bachelor. He submitted that the electricity and telephone bills also form part of domestic expenses.

10. On the contrary, the learned DR submitted that the standard of living of the assessee is on the higher side and hence estimate made by the Assessing Officer should be sustained.

11. We have heard rival contention on this issue and perused the record. It is stated that the assessee is residing with his parents and mostly, he was travelling on company's account. It is seen that the assessee has withdrawn a sum of Rs. 2.40 lakhs from his bank account. Though it is stated that this withdrawal used to pay electricity and telephone bills, yet as submitted by Ld A.R, these expenses would form part of domestic expenses. The question that arises is that how much money, the assessee would have spent over and above the amount so withdrawn. We noticed that neither the Assessing Officer nor the assessee has brought any material on record in support of their respective contentions. In the absence of any material, there is no option but to estimate domestic expenses. We noticed that the Assessing Officer has estimated domestic expenses at Rs. 50,000/- per month. Considering the facts and circumstances of the case, we are of the view that estimate of Rs. 50,000/- per month made by the Assessing Officer is on the higher side. We noticed that the assessee has withdrawn a sum of Rs. 2.40 lakhs from his bank account. It was stated that the assessee was a bachelor at that point of time. Accordingly, we are of the view that the additional monthly expenses over and above Rs. 2.40

lakhs referred above may be estimated at Rs. 10,000/- per month and in our view, the same would meet ends of justice. Accordingly we set aside the order passed by learned CIT(A) and direct the Assessing Officer to estimate domestic expenses at Rs. 10,000/- per month. We order accordingly.

12. Ground No. 5 relates to addition of Rs. 73,269/- in respect of LIC premium. At the time of hearing, learned AR did not press this ground. Accordingly, it is dismissed as not pressed.

13. Next issue relates to addition of Rs. 35,000/- on account of consultancy fees received. The assessee had shown consultancy fees of Rs. 2,84,600/- received from M/s. M.C. Duramix. It was noticed that the assessee has received a sum of Rs. 5,44,600/- from the above said company. The assessee stated that he had given loan of Rs. 2,25,000/- to the above said company and the same has been received back. The Assessing Officer accepted the same. Accordingly, after reduction of Rs. 2,25,000/-, the remaining amount worked out to Rs.3,19,600/-, whereas the assessee had offered Rs. 2,84,600/- only as consultancy fees, which resulted in a difference of Rs.35,000/-. Before the AO, the assessee submitted that he has paid back the above said amount of Rs.35,000/- to M/s M.C. Duramix. However, he could not produce any evidence in support of the said claim. Accordingly, the Assessing Officer assessed the same as income of the assessee. Learned CIT(A) confirmed the same.

14. Before us also, the assessee could not furnish any material to show that the above said amount of Rs. 35,000/- was paid back to M/s. M.C. Duramix. Accordingly, we confirm the order passed by Ld CIT(A) on this issue.

15. The last issue relates to addition of Rs. 8,50,000/- on account of advances paid for MHADA plot. The Assessing Officer noticed from the Balance sheet of the assessee that the assessee has shown a sum of Rs. 8,50,000/- as loans and advances, under the head "Current assets". It was seen that the

same is advance payment made to MHADA. The Assessing Officer asked the assessee to explain source of funds for giving advance of Rs.8.50 lakhs to MHADA. The assessee submitted that the advance was paid out of past savings and income of various years. The Assessing Officer did not accept the same, since the assessee did not furnish bank statement in support of payment of advance so made. Accordingly, he assessed the above said sum of Rs. 8.50 lakhs as income of the assessee.

16. Before learned CIT(A) it was submitted that the above said sum of Rs. 8.5 lakhs was given to MHADA in an earlier year. It was submitted that the ear years' records have been washed away by flood of 2005. One more contention was raised, i.e., it was also submitted that the above said amount of Rs. 8.50 lakhs was made on 25.11.2004 which falls under A.Y. 2005-06 and hence, this addition should be deleted.

17. The Learned CIT(A) noticed that the assessee is making contradictory contentions. He has shown amount of Rs. 8.50 lakhs in his Balance sheet as on 31.3.2004, but is claiming that it has been paid on 25.11.2004. Thus, the assessee has been changing his stand with regard to this payment. He also observed that the assessee has not furnished any correspondence received from MHADA. Accordingly, he took the view that it cannot be accepted that such advance payment made to MHADA either in any of earlier years or in the succeeding year. He also observed that the assessee has not shown that the advance was paid from explained sources. Accordingly, learned CIT(A) upheld that addition.

18. The Learned AR submitted that the assessee has disclosed the above said advance payment in the Balance-sheet, meaning thereby, sources for making this advance would stand automatically explained, since the Assessing Officer has accepted the liabilities shown in the Balance-sheet. Accordingly, he submitted that this addition should be deleted. When the Bench asked learned AR to furnish a copy of the Balance-sheet, he expressed his inability to furnish

the same immediately. However, he submitted that this issue may be restored to the file of the Assessing Officer for examining it afresh.

19. We have heard learned DR on this issue and perused the record. We noticed that the Assessing Officer has noticed the advance payment of Rs. 8.50 lakhs given to MHADA from the balance sheet furnished by the assessee. As rightly submitted by learned AR, the source of the investment would stand explained, if it has been shown in the Balance Sheet and the liabilities shown in the Balance sheet have not been doubted with. However, we noticed that this issue has not been examined from this angle. Further, the Ld A.R could not furnish a copy of Balance Sheet. Accordingly, we are of the view that this issue requires fresh examination at the end of the Assessing Officer. Accordingly, we set aside the order passed by learned CIT(A) on this issue and restore the same to the file of the Assessing Officer for examining it afresh.

20. We shall now take up the appeal filed by the assessee for A.Y. 2005-06.

21. Ground No. 1 & 2 relate to validity of reopening of the assessment. We have decided an identical issue against the assessee in the earlier year in the preceding paragraphs. Since the facts are identical, following the same, we decide this issue against the assessee.

22. Next issue relates to addition of Rs. 7 lakhs in respect of alleged commission/brokerage received.

23. The assessee has shown unsecured loan of Rs. 72,77,000/- in the name of M/s. Evershine Nest Pvt. Ltd. The Assessing Officer made inquiry with the above said company and it was also noticed that the above said company has given brokerage of Rs. 7 lakhs to the assessee for facilitating sale of flat. Accordingly, the Assessing Officer assessed amount of Rs. 7 lakhs as income of the assessee. The learned CIT(A) confirmed the same.

24. We have heard the parties on this issue and perused the record. We noticed that learned CIT(A) has confirmed the addition, since the assessee has not furnished any document to prove that the above said brokerage amount of Rs. 7 lakhs was not received by him. Before us also no material was placed in support of his claim. Accordingly we confirm the order passed by learned CIT(A) on this issue.

25. Next issue relates to addition of Rs. 2 lakhs on account of consultancy fees received. During the year under consideration the assessee has received Rs. 2 lakhs in his bank account from M/s. M.C. Duramix. It was also noticed that a sum of Rs.2.00 lakhs was also debited in the bank account immediately after the receipt. Since the assessee did not furnish any satisfactory explanation, the Assessing Officer assessed the above said amount of Rs. 2 lakhs as consultancy charges.

26. Before learned CIT(A), the assessee contended that the above said amount of Rs. 2 lakhs has been paid back to M/s. M.C. Duramix, which is evident from the bank account. Accordingly, it was contended that the Assessing Officer should not have made addition of Rs. 2 lakhs.

27. The Learned CIT(A) noticed that the Assessing Officer had issued notice under section 133(6) of the Act to M/s. M.C. Duramix, but it could not be served to it, since the above said person was not available in the given address. The Learned CIT(A) further noticed that the assessee has failed to furnish any document to show the amount of Rs. 2 lakhs was, in fact, repaid to M/s. M.C. Duramix. Accordingly, he upheld the addition.

28. We have heard the parties and perused the record. We noticed that the assessee has not furnished any material before us also, in support of his contention that the amount of Rs. 2 lakhs has been paid back to M/s. M.C. Duramix. Accordingly, we confirm the addition made by the Assessing Officer on this issue.

29. Next issue relates to addition on account of low personal withdrawals. In the preceding paragraph we have estimated personal withdrawal at Rs.1.20 lakhs over and above amount of Rs.2.41 lakhs withdrawn by the assessee. Thus over all personal expenditure was taken at Rs. 3.61 lakhs in the year relevant to A.Y. 2004-05. In the current year i.e. A.Y. 2005-06, we notice that the assessee had withdrawn Rs. 1.88 lakhs from his capital account. By taking amount estimated in A.Y. 2004-05 as the basis, we estimate aggregate amount of personal expenses at Rs. 4.00 lakhs during the year relevant to AY 2005-06. After giving set off of Rs.1.88 lakhs, the remaining amount of Rs. 2,12,000/- should be considered as short fall in the withdrawals for personal expenses, which is required to be added to the total income of the assessee. Accordingly, we set aside the order passed by learned CIT(A) on this issue and direct the Assessing Officer to sustain addition to the extent of Rs. 2.12 lakhs.

30. Ground No. 6 relates to alleged negative cash balance and ground No. 7 relates to addition of Rs. 5 lakhs on account of cash withdrawal.

31. Learned AR submitted that both these additions are inter linked and either of one could alone be sustained. He submitted that, if the assessee is given an opportunity to present his case properly before the Assessing Officer, he could explain the same to the Assessing Officer.

32. We have heard learned DR on this issue. Having regard the submissions made by learned AR, we are of the view that both these issues may be restored to the file of the Assessing Officer for providing an opportunity to the assessee to explain the facts relating to both these additions. Accordingly we set aside the order passed by learned CIT(A) on this issues and restore both of them to the file of the Assessing Officer for examining it afresh.

33. Ground No. 8 relates to addition of Rs. 73,269/- in respect of LIC premium. At the time of hearing learned AR did not press this ground. Accordingly this ground is dismissed as not pressed.

34. Last issue relates to addition of Rs. 20 lakhs under section 68 of the Act.

35. The assessee had shown a sum of Rs. 20 lakhs as unsecured loan taken from Shri Amit D. Singh in the liability side of the balance-sheet. The Assessing Officer issued notice under section 133(6) of the Act to the above said creditor but the same was returned back by the postal authority with the remark "incomplete address". The Assessing Officer asked the assessee to produce above said creditor but there is no response from the assessee. Hence, the Assessing Officer assessed the above said sum of Rs. 20 lakhs as unexplained cash credit under section 68 of the Act.

36. Before learned CIT(A), the assessee submitted that he had furnished confirmation letter from Shri Amit D. Singh and also copy of returns of income filed before the Assessing Officer. It was submitted that the Assessing Officer did not examine these documents and hence impugned addition was not justified. Learned CIT(A), however, was not satisfied with the contention of the assessee and accordingly confirmed the same.

37. We have heard the parties on this issue and perused the record. We noticed that the tax authorities have not examined the documents furnished by the assessee to prove cash credit. Accordingly we are of the view that this issue also requires fresh examination at the end of the Assessing Officer. Accordingly we set aside the order passed by learned CIT(A) on this issue and restore the same to the file of the Assessing Officer for examining it afresh.

38. In the result, both the appeals filed by the assessee are treated as partly allowed for statistical purposes.

Order pronounced in the open court on 15.07.2022.

Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 15/07/2022

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

PS