

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER
ITA No. 5416/Mum/2019 (A.Y. 2010-11)

Mr. Shafuzzaman Shamsuzzaman Shaikh

Shop No.2, Building No.2,
Mubarak Complex, V.B. Nagar,
Kurla (West), Mumbai-400070

PAN: AYIPS7233B

..... Appellant

Vs.

ACIT-26(3),
C-11, Pratyakshakar Bhavan,
B.K.C., Bandra (East),
Mumbai-400051.

..... Respondent

Appellant by	:	None
Respondent by	:	Ms. Kavita Kaushik
Date of hearing	:	07/06/2022
Date of pronouncement	:	05/09/2022

ORDER

PER GAGAN GOYAL, A.M:

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-38, Mumbai [hereinafter referred to as ('CIT(A)'] dated 28.01.2019 for the Assessment Year (AY) 2010-11. The assessee has raised the following grounds of appeal:

“EACH AND EVERY GROUND OF APPEAL IS IN THE ALTERNATIVE AND WITHOUT PREJUDICE TO THE OTHER

1. *The learned C.I. T. (A) has erred both in law and on facts in upholding the action of Ld. Assessing Officer in framing the impugned assessment order u/s. 147 of the Income Tax Act, 1961 and that too without assuming jurisdiction as per law and without complying with the mandatory conditions of Section 147 to 151 of the Income Tax Act, 1961.*

- i) Proper approval of Pr. CIT is not furnished along with copy of the reasons for reopening during assessment nor during the appeal proceedings.*
- ii) In spite of requisition by the Ld. C.I.T. (A), the Ld. Assessing Officer had not submitted his report in form no. ITNS-51. So in absence of any concrete supporting the CIT (A) had wrongfully presumed compliance of proper procedure as prescribed U/s 151 of the Income Tax Act, 1961 which is illegal and against the principles of natural justice. Hence this order needs to be quashed.*
- iii) That reasons recorded are based upon presumption and guess work and these are not more than reason to suspect and thus are not valid in the eyes of law as no belief can be formed on the basis of the reasons recorded.*
- iv) That the reopening of the assessment is bad in law for the reason that the sanction granted under section 151 of the income tax act, 1961 is not valid in the eyes of the law and the same is mechanical and has been done without independent reasoning and application of mind by the sanctioning authority.*

2) *The learned CIT (A) has erred in not considering the fact that there was no escapement of income found by the learned Assessing Officer in relation to the reasons recorded as no addition/ disallowance is made in the assessment order based upon the reasons recorded.*

- i) The Ld. CIT (A) has erred grossly and acted in defiance of Jurisdictional High Court judgment in the case of Jet Airways Ltd. 331 ITR 236 and Hon'ble Delhi High court Judgment in the case of Ranbaxy Laboratories vs. CIT; 336 ITR 136 (Delhi) and Hon'ble Rajasthan High Court Judgment in the case of CIT vs. Sh. Ram Singh; 306 ITR 343 (Rajasthan) whereby the issue as raised in ground herein is squarely covered.*
- ii) Following the above judgments this order also needs to be quashed,*

3) *The learned C.I.T (A) has erred in law and on facts in upholding the action of learned Assessing Officer in confirming the addition for the purchase of immovable property Rs. 12,77,900/- U/s 69 of the Income Tax Act, 1961.*

1) *Legally The Ld. Assessing Officer has jurisdiction for reassessment is only for F.Y.2009-10 and transactions made prior to this period were beyond his jurisdiction and investment made in the flat Rs. 10,35,000/- was prior to F.Y. 2009-10 Hence to that extent the Ld. Assessing officer had presumed unlawful jurisdiction.*

ii) *CIT (A) had confirmed the contention of the Ld. AO. that Non filing of the return of earlier years can be ground for treating the said investment as from undisclosed source. Whereas, as per settled tenet every assessment year is separate assessment and before resuming jurisdiction for transactions for other period the Ld.AO. had to issue fresh notice U/s. 148 of the Income Tax Act, 1961 after following proper procedure.*

iii) *These alleged transactions of Rs.10,35,000/- were beyond the period of six years so Assessing Officer had no jurisdiction on these transactions.*

iv) *The investment was recorded in his books and the Ld.AO had not rejected his books of accounts. If the investment is recorded in the books then provisions of sec 69 of the Income Tax Act, 1961 cannot be invoked. And if the Ld. AO. is not satisfied with the explanation given by the assessee then he has to record the reason for his dissatisfaction and also give an opportunity of being heard, absence of this procedure is violation of principle of natural justice.*

v) *Ld. CIT (A) had ignored the error of the AO while confirming the addition U/s 69 of L.T. Act, 1961 The cash withdrawal and income of the year was utilized for the payment of current years instalment to the builder Rs.1,51,000/- Stamp duty and Registration fees of Rs.61,900/- and brokerage 30,000/- which was recorded in the books and accepted by the Assessing Officer whereas the Assessing Officer had made addition of the entire investment including payment made during the year out of current year withdrawal and income utilized for investment in the flat.*

4) *The learned CIT(A) has erred in law and on facts in upholding the action of learned AO in making an addition U/s 69 of the Income tax Act, 1961 of*

Rs.2,09,000/- that are deposited in the bank by treating the same as income from undisclosed sources even though the same was capable of verification.

The Ld. A.O. had observed that cash deposit are more than the cash withdrawal, hence he had added entire cash deposit of Rs.2,09,000/- Ignoring the income offered for tax Rs.6,50,190/- opening cash in hand Rs.3,73,564/- and cash withdrawal during the year Rs.1,15,000/- which is utilized for cash deposits.

5) The Assessee craves leave to add, amend, alter, amend or drop any or all Grounds of appeal at the time of the Appeal proceedings.”

2. Brief facts of the case are that the assessee is an individual involved in electrical contract work. In the case of assessee concerned A.O received an information about non filing of return by the assessee for relevant A.Y. although, assessee name was appearing in NMS portal as non filer of return and carrying an information that the assessee had entered into a financial transaction involving immovable property of Rs 11.5 lacs/- Assessee was also provided a copy of document containing the relevant information.

3. On the basis of information of ITO- 17(2)(3),Mumbai, reasons were recorded and with the approval of Pr.CIT-26,Mumbai notice u/s 148 dated 31-03-2017 was issued and duly served on the assessee requesting the assessee to furnish his return of income for A.Y 2010-11 within 30 days.

4. In response to this assessee furnished his return of income on 20-07-2017 declaring total income of Rs 6, 50,190/-. In response to notice u/s 148, notice u/s 143(2) was issued and copy of reasons recorded for reopening of assessment were also provided to the assessee. Assessee submitted details with reference to property transaction and bank transactions entered into by the assessee during the F.Y 2008-09 and 2009-10. On perusal of the details of payments furnished by

the assessee it is observed that on 7 different dates between 13-02-2008 to 06-01-2009 i.e. F.Y 2007-08 and 2008-09 the assessee made payment aggregating Rs 10.35/- lacs towards purchase of property and brokerage of Rs 30,000/- on 15-04-2008 i.e. F.Y. 2008-09. Assessee further made payment of Rs 1.51/-lakhs on 10-08-2009 and legal expenses of Rs 36,000/- on 30-10-2009 i.e. relevant F.Y.

5. During the year under consideration assessee deposited cash in his bank account with Kotak Mahindra bank vide account no 09580010008580 amounting to Rs 2,09,000/-. In the relevant F.Y. assessee declared income of Rs 6,50,190/- in response to return filed u/s 148, and also had cash withdrawals of Rs 1,15,000/-

6. We have gone through the assessment order, order of Ld. CIT (A)-38 and submissions of the assessee along with grounds of appeal taken. It is clearly emanated from the order of A.O that out of Rs12, 77,900/- investment of Rs 10,65,000/- (10,35,00+30,000) was made during the F.Y 2007-08 to 2008-09. So, in the result amount to be considered in the relevant F.Y is Rs 2, 12,900/- only. In addition to this amount, cash deposit of Rs 2, 09,000/- is also a subject matter of relevant F.Y.

7. Ground No-1 and 2 we are not adjudicating as the assessee has fully complied with all the notices issued during the assessment proceedings and had not challenged the same during the assessment proceedings. Secondly in response to notice assessee furnished a positive taxable income of Rs 6,50,190/-. Moreover not only the relevant assessment year, assessee was in the category of non filer of return since last 4 assessment years. But entered into a transaction of purchase of immovable property in past years and partially in current F.Y. also. So looking at the facts of the case and in its all fairness of the matter we are not

inclined to accept the grounds of appeal raised by the assessee **hence, Ground No-1 and 2 are dismissed as un-sustainable.**

8. Ground No-3 and 4 raised by the assessee are on the merits of the case and interlinked with reference to the facts of the case. Hence both are clubbed and disposed off together.

9. As the facts discussed and mentioned supra, we observed that each assessment year is separate assessment year. In view of this amount of investments made during the F.Y 2007-08 to 2008-09 are beyond the jurisdiction of current assessment year proceedings i.e. Rs 10,65,000/- can't be considered and added back to the income of assessee in the assessment proceedings for assessment year 2010-11. This position of law will not change even if assessee had not filed any return for F.Y. 2007-08 to 2008-09 and whether the assessee had maintained any books of accounts or not in this F.Ys.

10. Assessee is a small time contractor/supplier of electrical goods and having small turn over in the current F.Y as well as in the previous F.Ys. Even if it is presumed that assessee would have filed the return the figure would have been 5 to 8 % of the gross turnover which is below the taxable limit. Figure of assessee's turnover are mentioned at Pg-9, Para 6.5.2 of the Ld. CIT (A) order and consequently was not supposed to maintain the books of accounts also.

11. As far as the amount of Rs 2,12,900/- and Rs 2,09,000/- being amount of increment of property and cash deposit respectively are concerned, we are agreed with the contention of the assessee that both the amounts are duly covered by the amount of income declared by the assessee in his return of income

and cash withdrawals of Rs 1,15,000/-. As the A.O had accepted the figure of returned income and cash withdrawals as reflected in assesses bank statement, there can't be any separate addition.

12. Ground No-3 and 4 raised by the assessee are allowed and it is hereby directed to delete the addition of Rs 12,77,900/- and Rs 2,09,000/- respectively.

13. In the result, appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 5th day of September, 2022.

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER

Mumbai, दिनांक / Dated: 05/09/2022
SK, Sr.PS

Copy 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.

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BY ORDER,

(Dy. /Asstt. Registrar)
ITAT, Mumbai