

IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI SANDEEP SINGH KARHAIL, JM

ITA No. 3734/Mum/2019

(Assessment Year 2014-15)

Income Tax Officer
Ward 30(3)(3)
535, Kautilya Bhavan,
BKC, Bandra East,
Mumbai

Vs.

Smt. Smruti Ajay Singh,
104, Renaissnace Bldg.
Mahada Layout,
Plot No.9, Samta Complex
Malwani malad west,
Mumbai-400 064

(Appellant)

(Respondent)

PAN No. EOHPS2406M

Assessee by : None

Revenue by : Shri Ajay Singh, DR

Date of hearing: 08.09.2022

Date of pronouncement : 20.09.2022

ORDER

PER PRASHANT MAHARISHI, AM:

01. This appeal in ITA number 3734/M/2019 is filed by the income tax Officer – 30 (3) (3), Mumbai (the learned AO) against the order passed by the Commissioner of Income-tax (Appeals)- 41, Mumbai [the learned CIT (A)] for A.Y. 2014 – 15 on 12th March, 2019 wherein the appeal filed by the assessee was allowed and addition of ₹ 251 lakhs made by the learned assessing officer as unexplained investment in property was deleted.
02. The solitary ground of appeal raised by the learned assessing officer is that the first appellate authority has



erred in deleting the addition made by the AO u/s 69 of the act of ₹ 251 lakhs without considering the facts of the case.

03. Despite notice, none appeared on behalf of the assessee on the date of hearing on 8 September 2022. Earlier on 2 August 2022, 8 August 2022, 7 June 2022 and several further earlier occasions shows that nobody from the side of the assessee appeared. In view of this, this appeal is decided on the merits of the case as per information available on record.
04. Facts of the case shows that assessee filed return of income on 30/7/2014 at a total income of ₹ 1,250,630/-. Subsequently the case of the assessee was selected for limited scrutiny as large investment in property compared to the total income of the assessee was found. Several notices were issued to the assessee. Emails were also sent on the address mentioned in the return of income. None appeared on behalf of the assessee. A final show cause notice was also issued which remained unanswered. Summons u/s 131 of the act was issued and served on the address of the assessee by hand through the inspector; this was also not responded to. Therefore, the attitude of the assessee before the learned assessing officer was absolutely non cooperative and defiant.
05. Therefore, on the merits the learned assessing officer noted that assessee has entered into the agreement for purchase of two properties for a total consideration of ₹ 126 lakh and 125 lakh which were registered before the



joint sub registrar. Notice u/s 133 (6) of the act was issued sub registrar on 21/11/2016 calling certain details which was replied on 16/12/2016. The details furnished by the joint sub registrar shows that assessee has purchased the above properties with other three joint purchaser. However as no compliance was made, no information was submitted and summons were also not honored the learned assessing officer did not have any other alternative but to make the addition of ₹ 251 lakh/- u/s 69 of the act as unexplained investment in purchase of properties. Accordingly assessment order u/s 144 read with section 143 (3) of the act was passed on 27/12/2016 at the total income of the assessee at ₹ 26,350,630/- and learned AO invoked provisions of Section 115BBE of the act.

06. Assessee aggrieved with the order of the learned AO preferred an appeal before the learned CIT – A, there assessee submitted a loan agreement from an NBFC namely Darwin platform capital limited which disbursed a loan of 2,51,00,000/- to one Mr. Ajay Singh and Mrs. Smriti Singh [Assessee] and other members of her family for purchase of flat 201 and 202 at Sai Sapphire, Chandivali, Powai, Mumbai. Confirmation letter of the nonbanking financial company was also submitted and the builder confirmed that sum has been received from NBFC. Based on this information, the learned CIT – A asked the learned assessing officer to submit the remand report. The learned AO in the remand report submitted that there is no definite conclusive evidence that what the ratio of the

assessee is in the above property. He further stated that husband of the assessee has been included as the borrower and there is no justification available. Further AO enquired with the nonbanking financial company on what basis the loan was granted, which was replied by submitting loan agreement as well as the repayment capacity of the husband of the assessee.

07. Based on this, the learned CIT(A) concluded that there is no prohibition on purchase of immovable property in the name of the spouse by the husband from his known sources and such property is also not covered Under the provisions of Prohibition of Benami property transactions Act, 1988. He further held that since the source of fund used for the purchase of property has been confirmed by a nonbanking financial company, the same is known sources of the fund, hence the loan cannot be treated as unexplained investment. With respect to the objection of the learned Assessing Officer, that assessee filed her return of declaring income of ₹ 1,250,630 and how she could have obtained loan of ₹ 251 lakhs, particularly when she is a housewife and only for a short duration she has income, the learned CIT – A discarded the above finding of the learned AO. In the end the learned CIT – A held as Under:-

"4.1.6 In view of the above observations, the facts of the matter clearly indicate that the impugned property was purchased with funds obtained illegally from borrowed funds and that the same does not fall

in the category of Benami property whose source of fund is doubtful and illegal. The funds have been released by the NBFC after fulfilling their legal requirements for the purchase of the property for which the appellant cannot be faulted. The disallowance correctly made by the AO u/s 144 to lack of information not supplied by the appellant has been set straight in the appellate proceedings wherein the source of funds, the basis for grant of the loan etc. has been confirmed and ascertained by the NBFC. I am convinced that the appellant's grievance is genuine and correct and that the addition made by the AO needs to be deleted. The AO is directed to delete the aforesaid additions. Hence the ground of appeal is allowed."

08. The learned departmental representative vehemently submitted that
- i. Assessee remained totally non cooperative and defiant, summons were not complied with. Therefore, any evidence that has been admitted by the learned CIT – A deserves to be rejected at threshold.
 - ii. Evidence correctly shows that the nonbanking financial company, which has given a loan to the assessee, is part of the assessee group only. It shows on the Internet that in the nonbanking financial company the husband of the assessee is a director.



- iii. Therefore, it is a loan not by any other party but routed funds of the assessee through the nonbanking financial company.
- iv. The assessee does not have any source of income. Only for this year, the return of income is filed and assessee has purchased huge property for 251 lakhs.
- v. It is very unusual that assessee has purchased two properties for a total consideration of ₹ 251 lakhs (para number 3 of the assessment order); the 100 percent of the finance is stated to be loan from an NBFC is very unusual. It shows that hundred percent of the price of the property is funded by NBFC. No independent NBFC would have entered into such a transaction.
- vi. There is no allegation of the learned AO with respect to the benami property, the learned CIT – A without any basis and any logic applied that law and deleted the addition.
- vii. The learned CIT – A did not consider it prudent to enquire that why an NBFC would give a loan to the relative of the assessee and the assessee, when they do not have any source of income. Even otherwise, the property was also not generating income but a residential property.



- viii. The learned CIT – A did not examine the assessee at all when AO issued summons u/s 131 of the act, which remained not complied with. Without examining the assessee the learned CIT – A deleted the addition.
- ix. The order of the learned CIT – A paragraph number 4.1.6 clearly shows that the addition has been deleted for the reasons, which are not at all there in the order of the learned AO.
- x. The learned CIT – A did not consider the remand report in proper perspective.
- xi. The learned CIT – A failed to consider the submission of the assessee that complete details were filed before the AO, which is merely a false statement. He submitted that order of the AO is passed u/s 144 of the act. Had this information been provided to the AO, it would have been incorporated in the assessment order. He submitted that only information was reason for limited scrutiny based on which the AO enquired with the joints sub registrar and obtained the information.
- xii. Even otherwise, creditworthiness of the nonbanking financial company, genuineness of the transaction have not at all been looked into by the learned CIT – A. Mere confirmation,



without any substance in the transaction, does not prove that the addition was incorrect.

xiii. The learned CIT – A also failed to record any evidence that whether real the nonbanking financial company was engaged in providing housing loan or not.

xiv. The learned CIT – A failed to appreciate that hundred percent of the property was purchased out of borrowed funds. He did not care to enquire that how the repayment has been made.

09. In view of this, the learned departmental representative submitted that order of the learned assessing officer requires to be restored and the order of the learned CIT – A should be vacated.

010. We have carefully considered the contention raised by the learned departmental representative as well as the orders of the lower authorities. In the present case, the return of assessee was picked up for scrutiny under the limited scrutiny criteria for verification of source of purchase of assets, which were disproportionate to her income. Assessee has declared income of ₹ 1,250,000/–, the property purchased in her name were of ₹ 251 lakhs. During the course of assessment proceedings, several notices were issued which were not complied with. Summons was issued which were not honoured. Therefore, as a last resort, the learned AO obtained



information from office of sub registrar. The information disclosed that there are other joint owners with the assessee. In absence of any information, the AO was helpless and he made addition of the amount of investment in the property. Before the CIT appeal, assessee furnished confirmation of a nonbanking financial company from whom loan was obtained of ₹ 251 lakhs, which is equivalent to the price of the property, agreements were furnished, therefore, the learned CIT – A deleted the addition. The learned CIT – A further travelled beyond the reasons of addition made by the learned AO and referred to the provisions of benami properties act. However, before us the learned departmental representative has vehemently stated 10 reasons showing that the order of the learned CIT – A is not sustainable. We do not have any hesitation in agreeing with argument of the learned DR. Firstly the learned CIT – A did not examine the assessee whereas the learned AO issued the summons and it was not complied with. Without examining the assessee, the learned CIT – A reached at the conclusion that assessee is a homemaker and she has fluctuating income. He did not care to look into the fact that assessee has only filed return of income for this year and there is no source of income available with the assessee. He also did not consider the fact that a person who does not have any source of income, how an NBFC could have lent ₹ 251 lakhs to such a party and where the price of the property is the same. He also did not examine that what is the actual cost of the property and how the



registration, stamp duty expenses have been incurred, if at all such expenses are incurred. He also did not care to examine that how the interest of the above loan could have been serviced. He also did not look into the facts of this NBFC whether it is engaged in the business of housing loan or not. He also did not consider the relationship between NBFC and the assessee family. In view of this, we find that the order of the learned CIT - A is not sustainable. We restore the appeal of the learned AO back to the file of the learned assessing officer with a direction to the assessee to furnish all the requisite details, appear before the assessing officer in compliance with the summons u/s 131 of the act, show the credentials of the nonbanking financial company and rational of loan given to the assessee within 180 days from the date of this order. The learned assessing officer may examine the same, give an opportunity of hearing to the assessee, and then decide the issue on the merits of the case.

011. In the result, the appeal of the learned assessing officer is allowed for statistical purposes.

Order pronounced in the open court on 20.09.2022.

Sd/-
(SANDEEP SINGH KARHAIL)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 20. 09.2022

Sudip Sarkar, Sr.PS/dragon



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.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai