

आयकर अपीलीय अधिकरण "सी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, PUNE

BEFORE SHRI INTURI RAMA RAO, AM
AND SHRI PARTHA SARATHI CHAUDHURY, JM

आयकर अपील सं. / ITA No.496/PUN/2022
निर्धारण वर्ष / Assessment Year : 2019-20

Sandeep Suresh Kulkarni,
C/o Deepali Kelkar,
Regency Anantam,
Building No.12, Elymus,
Flat No.1004, 10th Floor,
Phase 1, Vicco Naka,
Dawadi Road, Dombivli East,
Pin – 421 203.

PAN : ABLPK9260C

.....अपीलार्थी / Appellant

बनाम / V/s.

ITO (IT), Ward-2, Pune

.....प्रत्यर्थी / Respondent

Assessee by : Shri Dharan V. Gandhi
Revenue by : Shri Mallikarjun Utture

सुनवाई की तारीख / Date of Hearing : 07.12.2022
घोषणा की तारीख / Date of Pronouncement : 14.12.2022

आदेश / ORDER

PER PARTHA SARATHI CHAUDHURY, JM:

This appeal preferred by the assessee emanates from the findings of the learned DRP dated 30/03/2022 for Assessment year 2019-20 as per the following grounds of appeal.

- "1. The Ld. AO, NFAC, Delhi has erred in disallowing the entire indexed cost of renovation and interior amounting to Rs. 16,78,488/-.*
- 2. The Ld. AO, NFAC, Delhi has erred in not following the direction given by Dispute Resolution Panel of partially allowing the renovation & interior cost amounting to Rs.2,06,098/-.*
- 3. The Ld. NFAC, Delhi has erred in proposing to levy penalty u/s. 270A(9) as "misreporting of income"."*

2. At the very outset the learned counsel for the assessee submitted that he is not pressing ground nos. 2 & 3. We heard his submission, ground no. 2 & 3 are dismissed as not pressed. The only effective ground is ground no. 1 where the assessee is aggrieved by the disallowance of the entire index cost of renovation and interior amount to Rs.16,78,488/-. The brief facts in this case are that –

“2.3.1 The assessee sold residential flats bearing flat nos. 2505 & 2506, Bliss-City of Joy for the consideration of Rs.2,30,00,000/- and has shown capital gain at Rs.12,24,818/- after availing cost of indexation and deduction u/s 54 of Rs.45,66,000/-. The assessee has claimed total cost of improvement with indexation to the tune of Rs.21,90,352/-, out of which an amount of Rs.16,78,488/- being indexed cost of renovation of the cost of improvement to the extent of Rs.10,01,098/- was disallowed by the Assessing Officer in the absence of satisfactory evidences. The amount of Rs.10,01,096/- which was not proved pertains to the cost of renovation and interior cost. The assessee produced a certificate from the Architect/ Interior Designer certifying the total cost of Rs.10,01,098/-, the break-up of which was given as under.

<i>Vendors</i>	<i>Description</i>	<i>Month of Payment</i>	<i>Amount</i>
<i>Colorspeak Services</i>	<i>Painting</i>	<i>Sep-10</i>	<i>58,640</i>
<i>Parekh & Parekh</i>	<i>Grill Work</i>	<i>May -10</i>	<i>20,500</i>
<i>Home Town</i>	<i>Tiles, Fixtures & Misc. Items</i>	<i>Jul-10</i>	<i>73,445</i>
<i>Hemraj Mulji</i>	<i>Kitchen extension work</i>	<i>May -10</i>	<i>53,513</i>
<i>Santosh Pendse</i>	<i>1. Consultation fees 2. False ceiling, Living room/Bedrooms/Bathrooms upgrade work, plumbing electrification</i>	<i>May -10 to Aug -10</i>	<i>7,95,000</i>
		<i>Total</i>	<i>10,01,098</i>

2.3.2 The assessee could not submit necessary invoices/bills citing the reason that the work was carried out ten years ago and it was not possible to retain the invoices for so long. He had enclosed an email

conversation with the contractor which showed an estimated cost of Rs.7,65,300/-. During the course of assessment proceedings, the assessee furnished a certificate from Mr. S.S. Pendse, Architect & Interior Designer giving the total cost incurred at Rs.10,01,098/- as above. The Assessing Officer for the reasons that there is a difference between the estimate as per the email and as per the certificate, the entries highlighted by the assessee in the bank statement do not bear proper narration/description and that the bills/invoices /vouchers were not provided by the assessee has disallowed the entire amount of Rs.10,01,098/- and made an addition of Rs.16,78,488/-, which is the indexed cost of Rs.10,01,098/-.”

3. Before the learned DRP the assessee has furnished evidences which were even before the Assessing Officer like bank statements, e-mail correspondences and a statement from the architect. The learned DRP observed that as regards expenses pertaining to the amounts paid for painting, grill work, tiles fixtures and miscellaneous items, kitchen extension work these payments were evidenced in the bank statements. However, regarding the payment made to Mr. Pendse, the architect and interior designer, there were no evidence regarding the same in the bank statements produced by the assessee.

4. At para 2.3.2 of the Learned DRP findings when this issue was raised before the learned counsel for the assessee she had replied that probably most of these payments were made in cash. Learned DRP further observed therefore as per the bank statement the evidence of payments were reflected to the tune of Rs.2,06,098/- only but there was no evidence regarding the payment given to Mr. Pendse for an amount of Rs.7,95,000/- and except for the certificate given by Mr. Pendse regarding the estimate of cost of renovation work, the assessee was not able to prove whether Mr. Pendse has

received this amount or not and if received whether this amount was offered for tax in the relevant Assessment year by him in his return of income nothing was brought on record as evidence by the assessee. Accordingly, the learned DRP allowed the expenses to the tune of Rs.2,06,098/- and disallowed the amount of Rs.7,95,000/- which was the alleged payment made to Mr. Pendse.

5. At the time of hearing before this bench learned counsel reiterated the submissions placed before the subordinate authorities. He contended that there is no jurisdiction for disallowance of the payment made to Mr. Pendse of Rs.7,95,000/- since the bank statements though the name did not appeared evidencing payment, the part of the payment were made in cheque and some were made in cash. The learned counsel also submitted that the matter may be remanded to the file of the Assessing Officer for detailed factual verification.

6. Per contra learned DR placed strong reliance in the findings of the subordinate authorities and submitted the learned DRP has very fairly allowed the payments made reflected in the bank statement furnished by the assessee to the tune of Rs.2,06,098/- . However, since the assessee has not proved the payment made to Mr. Pendse and whether at all Mr. Pendse had received the said amount or not nothing has been proved by the assessee by furnishing any documentary evidences nor any copy of return was submitted demonstrating that if at all this amount was paid to Mr. Pendse he must have offered the same for tax in the relevant assessment year. No such evidence has been placed on record by the assessee therefore disallowance of Rs.7,95,000/- as upheld by the learned DRP should be sustained.

7. We have heard the rival contentions, analyzed the facts and circumstances in this case. The assessee has claimed detailed cost of improvement with indexation to the tune of Rs.21,90,352/-, out of which an amount of Rs.16,78,488/- being the index cost of renovation of the cost of improvement to the extent of Rs.10,01,098/- was disallowed by the AO in absence of the satisfactory evidences. This amount of Rs. 10,01,098/- which was disallowed by the AO pertains to the cost of renovation and interior cost. Out of the break up of this amount the learned DRP in their findings have examined and verified the bank statement, the e-mail correspondence and the statement of the architect and the learned DRP were convinced that out of this total amount there were evidence of payments in the bank statements for various work like painting, grill work, tiles, fixtures, miscellaneous items, kitchen extension work to the tune of Rs.2,06,098/- which was therefore allowed by the learned DRP. The learned DRP has disallowed Rs.7,95,000/- which is the alleged payment made to Mr. Santosh Pendse. The assessee has only furnished one certificate from the said Mr. Pendse which is also placed in our paper book and it is essentially a quotation cost of estimate for the entire interior work and renovation work carried out in the said flat of the assessee. There is no evidence whatsoever regarding the actual receipt of the money by Mr. Pendse nor the assessee was able to prove by furnishing the copy of Income-tax return of Mr. Pendse demonstrating that the payment received by him has been offered to tax in the relevant assessment year, no such evidences were placed on record by the assessee. The assessee had neither submitted necessary invoices / bills regarding the renovation and interior work in his house. We are of the considered view that the learned DRP was correct in allowing only the amount of Rs. 2,06,098/- out of the

total amount of Rs.10,01,098/- since these payments were reflected in the bank statements and accordingly also the learned DRP was also correct in disallowing the balance amount of Rs.7,95,000/- since the assessee failed to give any proof of payment made to Mr. Pendse architect concerned and there is no evidence on record even before us where it can be proved that this amount was actually received by Mr. Pendse or that he has offered this amount to tax. Even before this bench the learned counsel for the assessee could not substantiate thorough any evidences/documents to prove the payment made to Mr. Pendse. The learned counsel only submitted demonstrating from the bank statement of HDFC Bank which is annexed page 3 in the paper book before us wherein there are 3 entries dated 24.08.2010, 25.08.2010, 02.09.2010 and each of this entries mentions "cheque paid Mulund East - M, Cheque paid Mulund East - M, Cheque paid Mumbai - DOMBIV" respectively amounting to Rs.45,000/- each and that according to the learned counsel these were part of the payments made in cheque to Mr.Pendse. We observe no name appears in these entries regarding the name of the person in whose name the cheque was issued. Therefore the contention of the learned counsel for assessee that these were part of the payment made in cheque to the said architect cannot be accepted as true. The learned counsel has also relied on the decision of ITAT Delhi Bench in the case of ITO v/s Anil Kumar 2015 56 taxmann.com 320 Del, decision of ITAT Chennai Bench in the case of ACIT V/s. Sambandam Dorairaj 2021 133 taxmann.com 40 Chennai. These cases are substantially different and distinguishable on facts as compared to the case of assessee. The issue before us is absolutely factual and in the light of the factual parameters it has been examined that regarding the payment of Rs.7,95,000/- no evidence has been furnished by the assessee and therefore

these expenses incurred were not established. At the same time learned counsel for assessee had submitted since the certificate of Architect i.e. Mr. Pendse has been placed on record, if the matter is remanded to the file of the Assessing Officer the matter may be factually verified in detail. We are of the considered view since Income-Tax Act is welfare legislation which provides for the benefit to the assessee taxpayer and therefore considering the prayer of the assessee we remand the matter to the file of the learned Assessing Officer for re-adjudication as per law while complying with the principles of natural justice and the Assessing Officer shall conduct detailed factual verification on this issue. In view thereof ground no. 01 of the assessee allowed for statistical purposes.

8. In the result the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced on this 14th day of December, 2022.

Sd/-
(INTURI RAMA RAO)
लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-
(PARTHA SARATHI CHAUDHURY)
न्यायिक सदस्य/JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 14th December, 2022.

Ashwini

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(DRP), Mumbai.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "सी" बेंच, पुणे / DR, ITAT, "C" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.