

IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, MUMBAI
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 2554/Mum/2022
(A.Y: 2010-11)

Rajkumar Peshumal Pamnani (Represented by legal heir Maya Rajkumar Pamnani) 1502, Moru mahal, Dr. Ambedkar Road, Near Pali Naka, Bandra (W) Mumbai-400050.	Vs.	ITO 23(3)(1) Aayakar Bhavan, M.K.Road, Mumbai-400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ACGPP8917K		
Appellant	..	Respondent

Appellant by :	Ms.Bini Gowadia.AR.
Respondent by :	Ms. Jayashree Thakur.DR

Date of Hearing	18.01.2023
Date of Pronouncement	19.01.2023

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

The assessee has filed the appeal against the order of the National Faceless Appeal Centre (NFAC), Delhi / CIT(A), passed u/s 143(3) and 250 of the Act. The assessee has raised the following grounds of appeal:

- 1. On the facts and in the circumstances of the case and in law, Rs. the learned assessing officer erred in adding Rs. 31,68,000/- u/s 69 of the Act, Rs. 1,79,700/- u/s 68*

of the Act and disallowed expenses of Rs. 3,22,804/- from business and profession and the reasons assigned by him for doing so are wrong and contrary to the facts and circumstances of the case, provisions of Income Tax Act, 1961 and rules made thereunder

2. *On the facts and in the circumstances of the case and in law, the learned assessing officer erred in adding the amount of Rs. 31,68,000/-, Rs. 1,79,700/- and disallowed expenses of Rs. 3,22,804/- from business and profession without giving opportunity of being heard*

3. *On the facts and in the circumstances of the case and in law, the learned assessing officer erred in reopening the case u/s 148 of The Income Tax Act, 1961 and the reason assigned by him in reopening the case are wrong and contrary to the facts and circumstances of the case, provisions of The Income Tax Act, 1961 and rules made there under.*

4. *The Id. AO failed to appreciate the fact that the Ld. AO assess the income of the appellant on the basis of materials which is required to be considered for the purpose of assessment and not on the basis of statements of the third party.*

5. *The ld. AO failed to appreciate the fact that your appellant had already have a cash income in the original return and the same cash were deposited to the bank account.*

6. *The Id. AO failed to appreciate the fact that your appellant is engaged in the real estate consultancy and*

investing activity. The said interest was paid on the fund were used in the investing activity.

2. The brief facts of the case are that the assessee is an individual and derives income from business. The assessee has filed the return of income for the A.Y 2010-11 on 25.02.2011 disclosing a total income of Rs.4,79,000/- and the return of income was processed u/s 143(1) of the Act. Subsequently the AO has received information from DCIT, Central Circle 4(2), Mumbai that there was search and seizure action was conducted in the case of M/s. Sheth Developers Pvt Ltd by the Investigation Wing, Mumbai and the statement of Director of the Company recorded. Whereas, the Director has admitted that the On Money on account of sale four projects was accepted and the assessee is one of the customer who has paid Rs31,68,000/- during the F.Y 2009-10 to M/s. Sheth Developers Pvt Ltd in respect of Flat No. 2105 in the building project la-citadel, Mumbai. Therefore the AO has reason to believe that the income has escaped assessment and issued notice u/ 148 of the Act. In compliance to notice, the assessee has filed a letter on 18.09.2017 to treat the return of

income filed on 25.02.2011 as a due compliance, subsequently issued notice u/s 143(2) and 142(1) of the Act. In compliance to notice, the Ld. AR of the assessee appeared from time to time and submitted the details and the case was discussed. In respect of disputed issue of payment of on money, the assessee has filed the explanations, but the AO was not satisfied with the submissions and has made addition of Rs.31,68,000/- u/s 69 of the Act.

3. Further the AO found that there are certain cash deposits aggregating to Rs.1,79,700/- in the assessee's bank account in the F.Y 2009-10 and the show cause notice was issued. The assessee has filed explanations on 06.12.2017 in respect of withdrawals and the deposits being consultancy money received from various clients but the AO was not satisfied with the explanations and made addition of Rs.1,79,700/- as unexplained cash credit u/s 68 of the Act and similarly made addition of Rs. 83,149/- and assessed the total income of Rs.39,09,849/- and passed the order u/s 143(3) r.w.s 147 of the Act dated 14.12.2017.

4. Aggrieved by the order, the assessee has filed an appeal before the CIT(A), whereas the CIT(A) has considered the grounds of appeal, statement of facts and findings of the AO and has issued notices of hearing and since there was no compliance by the assessee to notices. Therefore the CIT(A) considering the information on record has confirmed the action of the A.O and dismissed the appeal. Aggrieved by the order of the CIT(A), the assessee has filed an appeal before the Hon'ble Tribunal.

5. At the time of hearing, the Ld. AR submitted that the CIT(A) has erred in confirming the action of the Assessing officer and due to death of the assessee, there was no proper compliance and legal heir was brought on record. Further, the assessee has a good case on merits and shall substantiate with the material evidence and prayed for an opportunity to explain before the lower authorities. Contra, the Ld. DR supported the order of the CIT(A).

6. Heard the rival submissions and perused the material on record. Prima-facie the CIT(A) has passed

the order considering the fact that there is no appearance in spite of providing adequate opportunity of hearing and the notices were issued. Therefore, the CIT(A) was of the opinion that the assessee is not interested in prosecuting the appeal and dismissed the appeal ex-parte confirming the action of the assessing officer. The Ld.CIT(A) has issued the notices of hearing through ITBA website referred at Para 4.3 of the order, but there was no response and thus the Ld.CIT(A) came to a conclusion that the assessee is not interested and decided the appeal based on the information available on record. Whereas the assessee has raised grounds of appeal challenging the additions of the A.O. and the Ld.AR has mentioned about the death of the assessee and legal heir brought on record, hence there could be various reasons for non appearance which cannot be overruled. Therefore, considering the principles of natural justice shall provide one more opportunity of hearing to the assessee to substantiate the case with evidences and information. Accordingly, set aside the order of the CIT(A) and remit the entire disputed issues to the file of the Assessing Officer to adjudicate

afresh on merits and the assessee should be provided adequate opportunity of hearing and shall cooperate in submitting the information and allow the grounds of appeal of the assessee for statistical purposes.

7. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 19.01.2023.

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 19.01.2023

KRK, PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

(Asst. Registrar)
ITAT, Mumbai