

IN THE INCOME TAX APPELLATE TRIBUNAL

"SMC" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER, AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.191/Mum./2023

(Assessment Year : 2015-16)

Manoj Kumar Chandrama Prasad Pande
9/1-B, Shreenath Niwas Society
Near Santoshi Mata Temple
Roa Tagore Nagar, Vikhroli (E)
Mumbai 400 083 PAN – ALRPP3652M

..... Appellant

v/s

Income Tax Officer
Ward-3(3)(1), Mumbai

.....Respondent

Assessee by : Shri Sanjay Jaiswal
Revenue by : Shri Satyaprakash Singh

Date of Hearing – 11/04/2023

Date of Order – 12/04/2023

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 15/11/2022, passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals)-57, Mumbai, [*"learned CIT(A)"*], for the assessment year 2015-16.

2. In the larger interest of justice, the slight delay of 6 days in filing the present appeal is condoned. During the hearing, the learned Departmental Representative (*"learned DR"*) also did not raise any objection against the condonation of the aforesaid delay.

3. In this appeal, the assessee has raised following grounds:-

"Ground No.1: No opportunity of cross examination:

1. On the facts and in the circumstances of the case and in law, the CIT(A) impliedly erred in confirming the action of the AO of not granting the cross examination of documents relied on by him while assessing the income of the Appellant and passing the assessment order.

2. The Appellant prays that it be held that the action of the lower authorities be deleted and it be held that orders passed by them are without giving any opportunity to the Appellant to cross examine the declarant and the documents relied on by the AO and be treated as null and void.

Without prejudice to above

Ground No. 2: Unexplained Investment u/s 69B: Rs. 22,70,750/-:

1. On the facts and in the circumstances of the case and in law, the CIT(A) erred in confirming the action of AO of making addition of Rs. 22,70,750/- under section 69B of the Act on the alleged grounds the Appellant has paid on money in cash for acquisition of the flat and the same has been confirmed by Mr. Subodh Runwal of Runwal Group.

2. The Appellant prays that the action of the lower authorities be deleted.

Without prejudice to above

Ground No. 3: General:

The Appellant craves leave to add to, alter and/or amend all or any of the foregoing grounds of appeal.

4. The brief facts of the case as emanating from the record are: The assessee is an individual and is working as an employee in the Merchant Navy. For the year under consideration, the assessee filed his return of income on 17/12/2016 declaring a total income of Rs. Nil. The return filed by the assessee was processed under section 143(1) of the Act. Subsequently, on the basis of information received from the Directorate of Investigation, Mumbai that the assessee has paid on-money of Rs. 22,70,750 in cash to M/s Runwal

Homes Private Limited towards the purchase of residential flat, proceedings under section 147 of the Act were initiated and notice under section 148 of the Act was issued on 23/08/2017. In response to the said notice, the assessee filed a letter stating that he is working in the Merchant Navy for Fleet Mount Company, Hong Kong as Master Marine and maintaining NRE status. The assessee was asked to furnish details of payment made to M/s Runwal Homes Private Limited with documentary evidence. The assessee was also asked to explain the on-money payments made to M/s Runwal Homes Private Limited for the purchase of the flat during the year under consideration. The Assessing Officer ("AO") also issued summons under section 131 to the assessee and the builder Mr. Subodh Runwal calling for the details and explanation in support of the on-money paid/received. However, both the assessee and the builder failed to reply to the summons. Accordingly, the assessment was completed on the basis of material available on record. The AO by relying on the information received from the Directorate of Investigation came to the conclusion that there is enough reason to believe that the assessee is one of the beneficiaries by making on-money payments. In absence of details regarding the source of cash payment, the AO vide order dated 28/12/2017 passed under section 143(3) r/w section 147 of the Act treated the amount of cash of Rs. 22,70,750 paid to Runwal Group as income of the assessee for the year under consideration and added the same under section 69B of the Act. The learned CIT(A) vide impugned order dismissed the appeal filed by the assessee. Being aggrieved, the assessee is in appeal before us.

5. During the hearing, the learned Authorised Representative ("*learned AR*") submitted that the AO relied on the statement recorded of the builder, however, no opportunity to cross-examine the builder was granted to the assessee.

6. On the contrary, the learned Departmental Representative ("*learned DR*") by referring to page No. 11 of the impugned order submitted that the AO provided the opportunity of cross-examination of Mr. Subodh Runwal, however, the assessee chose not to avail such opportunity. Learned DR further submitted that the AO provided copy of all the documents relied upon for making the addition in the hands of the assessee and therefore there is no requirement to grant the opportunity of cross-examination.

7. We have considered the rival submissions and perused the material available on record. The only grievance of the assessee, in the present appeal, is pertaining to the addition of Rs. 22,70,750 by treating the same as payment of on-money in cash. As evident from the record, the AO on the basis of information received from the Directorate of Investigation that the assessee has been identified as one of the persons who had paid on-money in cash to M/s Runwal Homes Private Limited for the purchase of property, initiated proceedings under section 147 of the Act. During the reassessment proceedings, the AO also placed reliance on the statement of Mr. Subodh Runwal recorded on oath before DDIT(Investigation), Mumbai, during the search and seizure proceedings under section 132(4) of the Act in the case of Runwal Group of companies. It is also evident from the record, when summons

were issued by the AO to the assessee as well as the builder, Mr. Subodh Runwal, calling for the details and explanation in support of the on-money paid/received, none of them replied to the summons and therefore, the assessment was completed on the basis of material available on record. Thus, when the person, whose statement was relied upon to make the addition in the hands of the assessee, does not appear in response to the summons, the submission of the Revenue that the assessee chose not to avail the opportunity to cross-examine the builder provided by the AO appears to be a mere empty formality. Further, we find that the difference in the price of the property, which was considered as on-money paid in cash is based on sale value as per the email, however, there is no evidence available on record as to between whom this email correspondence took place.

8. We find that the Hon'ble Supreme Court in *Andaman Timber Industries vs. Commissioner of Central Excise*, [2015] 314 ELT 641 (SC), has observed as under:

"6. According to us, not allowing the assessee to cross-examine the witnesses by the Adjudicating Authority though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity inasmuch as it amounted to violation of principles of natural justice because of which the assessee was adversely affected."

9. Thus, merely providing the evidence relied upon by the AO cannot substitute the fundamental requirement of providing the opportunity for cross-examination. We further find that the Hon'ble Supreme Court in *I.C.D.S. Ltd. vs CIT*, [2020] 273 Taxman 12 (SC) held that where the issue involved was about not extending an opportunity to the appellant to cross-examine

witnesses relied upon by Assessing Officer, the entire matter would be considered by First Appellate Authority afresh by giving fair opportunity to both sides to espouse their claim. Therefore, in view of the above findings, we set aside the impugned order and restore the matter to the file of AO for *de novo* adjudication after providing the assessee with all the documents, which were relied upon in support of the impugned addition. Further, the AO is directed to grant the opportunity to cross-examine the party on whose statement reliance was placed. Since the matter is remanded to the AO for *de novo* adjudication, the assessee shall be at liberty to file all the documents/evidence in support of his claim. Further, the AO if required, may issue necessary notices/summons to adjudicate the issue involved. The assessee is also directed to fully cooperate with the AO in completing the assessment by furnishing all the details that may be called for. Accordingly, ground no.1 raised by the assessee is allowed for statistical purposes. As the matter is remanded to the AO, the other grievances raised by the assessee on merits do not call for adjudication at this stage. Accordingly, grounds raised by the assessee are allowed for statistical purposes.

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

Order pronounced in the open Court on 12/04/2023

Sd/-
SPRASHANT MAHARISHI
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 12/04/2023

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Mumbai; and
- (5) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

By Order

Assistant Registrar
ITAT, Mumbai