

**IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH MUMBAI**

BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

**ITA No. 1040/Mum/2023
(Assessment Year: 2011-12)**

Zubeda Khalil Badkar FlatNo.2205,Windsor, ShastriNagar, Andheri (W), Mumbai-400053	बनाम/ Vs.	ITO Ward 33(1)(1), Kautilya Bhavan, BKC, Mumbai-400051.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ADAPN2290G		
(अपीलार्थी /Appellant)		(प्रत्यर्थी / Respondent)

Assessee by :	Mr.Abhishek Jhunhunwala.AR
Revenue by :	Mr.Abhisek Kumar Singh.DR

सुनवाई की तारीख / Date of Hearing	19/06/2023
घोषणा की तारीख / Date of Pronouncement	21/06/2023

आदेश / ORDER

PER PAVAN KUMAR GADALE - JM:

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

1.0 On facts and circumstances of the case and in law, Ld. CIT(A) erred in passing the appeal order exparte without considering the bonafide reasons and compelling circumstances which had precluded the appellant to represent the appeal;

2.0 On facts and circumstances of the case and in law, Ld. CIT(A) erred in confirming the order u/s 144 and ought to have considered the bonafide reasons precluding the appellant to participate in the assessment;

3.0 On facts and circumstances of the case and in law, Ld. CIT(A) erred in confirming the addition u/s.68 of unexplained cash deposits made in bank account of Rs.7,50,000/-;

4.0 On facts and circumstances of the case and in law, Ld. CIT(A) erred in confirming the addition u/s.69 of unexplained investments in mutual funds of Rs.12,00,000/-;

5.0 The Ld. CIT(A), before confirming the addition u/s.69 of unexplained investments failed to consider the fact that the addition of the source of funds had already been brought to tax u/s.68, thereby resulting into double taxation;

6.0 On fact and circumstances of the case and in law, Ld. CIT(A) erred in confirming the addition of Capital Gain on considering the deemed sale consideration u/s.50C at Rs.25,17,000/-, as against agreement value of Rs. 15,00,000/- and ought to have referred the matter to the valuation officer u/s.50C(2) of the Act;

7.0 A fresh prayer is made to refer the valuation matter to the Valuation Officer u/s.50C(2) to determine the fair value of the property sold during the year

2. The brief facts of the case are that the assessee is an individual and filed the return of income for the A.Y 2011-12 on 18.09.2011 disclosing a total income of Rs.1,12,179/- and the return of income was processed u/s 143(1) of the Act. Subsequently the AO has received information for DIT (inv), Mumbai that the assessee has sold the property in F.Y.2010-11 for Rs.15 Lakhs and the stamp duty valuation of the property is Rs.25.17 Lakhs and there is a difference in the value. The Assessing Officer (A.O) has reason to believe that the income has escaped assessment and issued notice U/sec148 of the Act. Subsequently, the AO has issued notice u/s 143(2) and 142(1) of the Act and there was no

compliance by the assessee in respect of notices issued. The A.O. has dealt on these facts at Para 2 & 3 of the assessment order. Finally the A.O has invoked the provisions of section 144 of the Act based on the information available has made the additions (i) Rs.12 lakhs as unexplained investments with regard to purchase of units of Axis Mutual fund on 07.01.2011, 08.03.2011 and 23.03.2011 as no details were filed.

3.(ii) On the second disputed issue as per the AIR information, the assessee has made cash deposits in the savings bank account of Bank of Maharashtra on 24.06.2010 of Rs.5 lakhs and 25.06.2010 of Rs. 2.5 lakhs, since no information was filed by the assessee, the AO has made addition u/s 68 of the Act aggregating to Rs. 7.5 lakhs.(iii) the last disputed issue that, the AO has considered the facts of sale of immovable property and found that the assessee has not offered the capital gains on sale of the property and made addition of short term capital gains of Rs. 25,17,000/- and assessed the total income of Rs. 45,79,180/- and passed the order u/s 144 r.w.s 147 of the Act dated 21.11.2016.

4. Aggrieved by the order of AO, the assessee has filed appeal before the CIT(A). Whereas CIT(A) has considered the grounds of appeal, statement of facts and there was no reply filed to the notices issued nor any appearance by the assessee or by

the Ld.AR. Therefore, the CIT(A) has relied on the information on record and sustained the action of the Assessing Officer and dismissed the appeal of the assessee. Aggrieved by the order of CIT(A), the assessee has filed appeal before Hon'ble Tribunal.

5. At the time of hearing the Ld. AR submitted that the CIT(A) has erred in confirming the additions made by the AO and overlooking the facts that the assessee has suffered health issues. Further, Ld.AR submitted that the assessee has a good case on merits and has filed an application for admission of additional evidences Under Rule 29 of the Income Tax Rules, 1962 and prayed for allowing the appeal. Per Contra, the Ld.DR submitted that the transactions are not established with the evidences before the lower authorities and the Ld.DR supported the order of CIT(A).

6. Heard the rival submissions and perused the material on record. The sole crux of the disputed issue that the CIT(A) has erred in confirming the additions by the A.O. as the transactions are not supported with the documentary evidences and non appearance of the assessee. The Ld.AR emphasized that the assessee has suffered health issues and was mentally disturbed and supported the facts and causes with the affidavit. Whereas the assessee is filling the application for admission of additional evidences under Rule 29 of ITAT rules with medical certificate, working of

longterm capital gains, sale agreement of the property, bank statement, purchase agreement of the property, details of investment in mutual funds and copy of Income Tax returns which were not available earlier and could not produce before the lower authorities. Further the evidences play a important role in decision making in the adjudicating proceedings. Therefore, considering the facts, circumstances and additional evidences, the assessee should not suffer for non filing of material information, as the evidences play a vital role in decision making and admit the additional evidences. Accordingly, to meet the ends of justice, set aside the order of the CIT(A) and restore the entire disputed issues along with the additional evidences to the file of the assessing officer to decide afresh on merits and the assessee should be provided adequate opportunity of hearing and shall cooperate in submitting the information and the grounds of appeal of the assessee are allowed for statistical purposes.

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

Order pronounced in the open court on 21.06.2023.

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 21/06/2023

KRK, PS

आदेश की प्रतिलिपि अग्रेषित/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, मुम्बई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

1.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Asst. Registrar)
आयकर अपीलीय अधिकरण, मुम्बई/ ITAT, Mumbai