

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

ITA No. 320/Mum/2022
(A.Y: 2010-11)

Alibhai Safruddin Malik 22 Sea Pebbles, Near Joggers Park, Carter Road, Bandra, Mumbai - 400050.	Vs.	ITO - 23(1)(1) Matru Mandir, Tardeo, Nana chowk, Mumbai - 400007.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AZMPM7354A		
Appellant	..	Respondent

Appellant by :	Mr.Shankar Balasubramaniam.AR
Respondent by :	Ms.Kavita Kaushik.DR

Date of Hearing	03.06.2022
Date of Pronouncement	07.06.2022

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

The assessee has filed the appeal against the order of CIT(A) National Faceless Appeal Centre (NFAC), New Delhi passed u/s 147 r.w.s 144 and 250 of the Income Tax Act, 1961. The assessee has raised the following grounds of appeal.

1. *On the facts and in the circumstances of the case and in law the learned CIT (A) of the National Faceless Appeal Centre erred in confirming the addition of Rs. 39,75,000/- under section 69 of the Income Tax Act, 1961, as unexplained*

Investments by mentioning that "no documentary evidences like sale deeds/agreements etc were filed before the AO or CIT (AU) in support of the claim" in spite of the fact that all the documents were attached vide your appellant's representative submission dated 20/02/2021 vide Response to Notice ID 100030764113, which has been considered the learned CIT (A) in his order.

2. On the facts and in the circumstances of the case and in law the learned CIT (A) of the National Faceless Appeal Centre erred in confirming the addition of Rs. 547,000/- under section 68 of the Income Tax Act, 1961 as unexplained cash credit in spite of the fact the details of the Cash Withdrawal and Cash Deposit made in the account along with the copies of the Bank Statement were attached vide your appellant's representative submission dated 20/02/2021 vide Response to Notice ID 100030764113, which has been considered the learned CIT (A) in his order.

3. The Appellant craves leave to add, amend, alter vary and/or withdraw any or all the above grounds of appeal.

2. The brief facts of the case are that, the assessee is a super senior citizen and do not have any taxable income. Whereas in the F.Y 2009-10 the assessee has sold one flat at Bandra which was jointly held by the assessee and his son who is non-resident. The said flat was sold for 1,64,49,000/- and the assessee's share has worked out to Rs.82,24,500/-. Further the A.O found that the assessee has made bank deposits of Rs.47,75,000/- and received interest of Rs. 2,23,744/- as per the individual transaction

statement (ITS) available in ITD. Since the assessee has not filed the return of income, the Assessing officer (A.O.) has reason to believe that income has escaped assessment and issued notice u/s 148 of the Act. Subsequently, the notice u/s 142(1) of the Act was issued on various dates and a show cause notice was issued. The notice was send by post to the available address as well as affixed by the ward inspector on 17.11.2017 as per address disclosed in latest return of income filed for the A.Y 2016-17. Since there was no compliance to the notice and no explanations were filed.

3. The A.O. has applied the Best judgment assessment U/sec144 of the Act and made the addition of unexplained investments in time deposits in DCB bank u/s 69 of the Act of Rs. 39,75,000/-.The AO has issued notice u/s 133(6) of the Act on the DCB bank and as per the bank statement of the assessee in DCB bank, Bandra the assessee has cash deposits of Rs. 5,47,000/- for the F.Y 2009-10 and was added u/s 68 of the Act. The A.O has obtained the details of interest pertaining to the assessee of Rs.10,402/- from the DCB bank, Bandra branch and

Rs.2,13,859/- interest from DCB Bank, Pune branch and assessed the total income of Rs.47,46,260/- and passed the order u/s 144 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). The CIT(A) considered the grounds of appeal, findings of the A.O. but has dismissed the appeal as the details were not properly explained and no documentary evidence was filed and dismissed the assessee 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 not considering the material information filed in the course of hearing proceedings and the assessee is a super senior citizen and has income source of bank interest. The ld. AR submitted that the vital information before the CIT(A) with the bank statements, letters and were over looked and prayed for an opportunity to substantiate with the details before the lower authorities and allow the

appeal. Contra, the Ld. DR supported the order of the CIT(A).

6. We heard the rival contentions and perused the material on record. The sole crux of the disputed issue envisaged by the Ld. AR that the CIT(A) has over looked the material information filed in the appellate proceedings. The assessee is a super senior citizen and has only interest on bank deposits as income sources and dependent on family members. The Ld.AR referred to the letter dated 19-02-2021 filed before the CIT(A). The Ld.AR substantiated the submissions with the bank statement of DCB Bank Bandra Branch, & Pune Branch at page 4 to 11 of paper book. In respect of sale of flat the Ld.AR referred to sale deed, purchase deed at 14 to 88 of paper book. Considering the overall facts, circumstances and requisite details in the paper book submitted in the course of hearing, we find the submissions of the Ld.AR are realistic and duly supported with the material information. Accordingly, we restore the entire disputed issues to the file of the assessing officer for limited purpose along with material information to verify and examine the facts and pass

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the order on merits and the assessee should be provided the adequate opportunity of hearing 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 07.06.2022.

Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 07.06.2022

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, Mumbai / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

(Asst. Registrar)
ITAT, Mumbai