

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "I" MUMBAI

BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
MS. KAVITHA RAJAGOPAL (JUDICIAL MEMBER)

ITA Nos. 1131, 1129, 1130/MUM/2023
Assessment Years: 2016-17 to 2018-19

Ashwinkumar Liladhar Vaidya,
68, Manor Road, Oldham OL4
5NB Lancashire,
United Kingdom.

PAN No. AGHPV 7878 C
Appellant

ITO, Int. Tax Ward 4(3)(1),
Mumbai.

Vs.

Respondent

Assessee by : Mr. Ashish A. Thakurdesai
Revenue by : Mr. Anil Sant, Sr. DR

Date of Hearing : 12/10/2023
Date of pronouncement : 19/10/2023

ORDER

PER OM PRAKASH KANT, AM

These appeals by the assessee are directed against three separate final assessment orders, each dated 23/01/2023, passed by the Income-tax Officer, International Taxation ward -4(3)(1), Mumbai (in short 'the Ld. Assessing Officer') for assessment years 2016-17 to 2018-19 respectively, pursuant to the respective directions issued by the Ld. Dispute Resolution Panel (Ld. DRP) on 28.12.2022, 29.12.2022 and 29.12.2022 respectively. In these appeals, common issues in dispute are involved and therefore same



were heard together and disposed off by way of this consolidated order for convenience and avoid repetition of facts.

2. As identical grounds have been raised by the assessee in these appeals, therefore, for brevity, we are reproducing only the grounds of appeal of the assessee for assessment year 2016-17 as under:

1. *On the facts in circumstances of the case and in law the issue of notice under section 153C of the Income Tax Act, 1961 is bad in law.*
2. *On the facts in circumstances of the case and in law the impugned assessment order is bad in law as as the notice under section 153C of the Income Tax Act, 1961 has been issued without conclusive satisfaction, cogent material and basis of arriving satisfaction and relying only on incriminating materials obtained at search and seizure proceedings on third party without providing these Statements to the appellant and without giving an opportunity to the appellant to cross examine the third party.*
3. *On the facts in circumstances of the case and in law the learned Income Tax Officer erred in adding Rs.4,50,000/- us 69 of the Income Tax Act, 1961 completely ignoring source of funds available with the appellant.*
4. *On the facts in circumstances of the case and in law the learned Income Tax Officer erred in charging interest of Rs.86,940,- and Rs.1,18,930/- u/s 234A and 234B respectively.*

2.1 Briefly stated facts of the case are that the assessee is a non-resident Indian and currently settled in United Kingdom (UK) as citizen of UK. The assessee is having certain immovable properties in India and was showing rental income in the return of income filed for relevant assessment years from 2016-17 to 2018-19. During the financial year corresponding to the assessment year 2018-19, the assessee enter into purchase of a flat in an apartment namely 'Decora Fortune', at Rajkot (Gujrat) for sale consideration of Rs.14,00,000/- as recorded in the registered sale agreement dated 04.01.2018. A search was conducted at the premises of the



developer of the said apartment and his associates. During the said search a 'pendrive' was found and seized on an employee of the developer namely 'Shri Himanshu Raiyani', in which ledger account of assessee, maintained in 'parallel books' was found. According to the said ledger account, the assessee had paid additional sum of Rs.10,87,600/- in cash to the developer. In view of the incriminating material belonging to the assessee and the information therein pertaining to assessee, the Assessing Officer of the searched person intimated to the Assessing Officer of the assessee, who after following the due procedure of the law issued notice u/s 153C of the Act to the assessee for assessment years 2016-17 to 2-18-19. In response, the assessee filed return of income for all those three assessment years declaring the total income which was declared in the original return of income filed. The Assessing officer completed scrutiny of the return of income and issued a draft order u/s 144C r.w.s. 153C of the Act for all the three assessment years proposing addition of Rs.4,50,000/- in assessment year 2016-17, Rs.4,62,600/- in assessment year 2017-18 and Rs.1,75,000/- in assessment year 2018-19. The assessee filed objection before the Ld. DRP and the Ld. DRP after considering the submission of the assessee held the addition to the extent of Rs.4,12,000/- in assessment year 2016-17; Rs.1,88,600/- for assessment year 2017-18 and Rs.1,75,000/- for assessment year 2018-19. In view of the direction of the Ld. DRP, the Assessing Officer has passed impugned final assessment orders, against



which assessee is in appeal before the Tribunal raising the grounds as reproduced above.

3. Before us, the Ld. Counsel for the assessee filed a Paper Book containing pages 1 to 136 and submitted that in all the three assessment years, the Ld. DRP has merely rejected opening cash balance of Rs.4,12,000/- as on 31.03.2015. Thus bone of contention in all three assessment years is whether there was opening cash in hand of Rs.4,12,000/- was available with the assessee. The Ld. Counsel for the assessee referred to Paper Book page No. 2 showing the amount of Rs.4,12,000/- as opening cash balance. Further, the Ld. Counsel of the assessee referred to Page No. 8 and 9 of the Paper Book and submitted that assessee had incurred cash expenses for additional work in the nature of interior or furnishing for which assessee paid Rs.9,50,000/- to M/s 'Shriram Enterprises' and balance Rs.1,37,600/- was reimbursed to him for stamp duty and registration charges incurred by him on behalf of the assessee. In support of opening cash balance of Rs.4,12,000/- the Ld. Counsel for the assessee referred to the balance sheet and capital account for assessment year prior to assessment year 2016-17. The Ld. Counsel submitted that in earlier years assessee has withdrawn the money from its bank account detail of which was filed and available on page 46 of the Ld. DRP. The Ld. Counsel also produced a summary of the said explanation



of the cash balance as on 31.03.2015 amounting to Rs.4,12,000/- as under:

Particulars	Amount (Rs.)
<i>Opening Balance as on 01-04-2012</i>	25,000/-
<i>Add : Cash withdrawal during the year 2012-2013</i>	1,67,000/ ~'
<i>Closing Balance as on 31-03-2013</i>	1,92,000/-
<i>Add : Cash withdrawal during the year 2013-2014</i>	85,000/-
<i>Less: Cash deposited in bank during the year 2013-2014</i>	5,000/-
<i>Closing balance as on 31-03-2014</i>	2,72,000/-
<i>Add : Cash withdrawal during the year 2014-2015</i>	1,75,000/ ~
<i>Less: Cash deposited in bank during the year 2014-2015</i>	35,000/-
<i>Closing Balance as on 31-03-2015</i>	4,12,000/-

3.1 The Ld. Counsel submitted that the assessee has already demonstrated separate withdrawal in respect of personal expenses as well as expenses for maintenance of the other let out properties and therefore, the cash balance which was withdrawn from time to time by the assessee during his visit to India was available with the assessee. He submitted that the cash payment of Rs.10,87,600/- to M/s Shriram Enterprises is duly explained and hence no addition for unexplained investment is required to made in the hands of the assessee for assessment year 2016-17 to assessment year 20181-19.

4. Per contra, the Ld. Departmental Representative (DR) submitted that there are no evidence in support of that the cash withdrawn in the assessment years 2012-13 to 2015-16 was kept with the assessee and therefore, the Ld. DRP justified in partly upholding addition in unexplained investment.



5. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. We find that the assessee is a non-resident Indian and purchased a flat in Rajkot. During the course of the search action at the premises of the developer of the flat ledger account of the assessee was found wherein along with cheque amount, cash payment of Rs.10,87,600/- was found. According to the Assessing Officer this money was paid for construction of the flat whereas the assessee submitted that this amount was paid to the developer M/s Shriram Enterprises for carrying out extra/additional work of furnishing and for which separate agreement was made with the said entity. Thus it is undisputed that said payment of Rs.10,87,600/- was made in cash by the assessee. The only dispute which is left whether the said cash payment was made out of explained sources or unexplained sources. The assessee has explained the entire amount by way of withdrawals from his bank account and sum of Rs.4,12,000/- as the opening cash balance as on 01.04.2015. The Ld. DRP has rejected the contention of availability of the opening cash balance in the hands of the assessee amounting to Rs.4,12,000/-. The details of the availability of the opening cash balance of Rs.4,12,000/- has been stated by the assessee as withdrawn from the different bank account. The Ld. DRP has rejected this contention observing as under:

“6.6.6 Any prudent man would withdraw cash from the bank when the cash withdrawn earlier is utilised. We may note here that the assessee has deposited an amount as small as Rs. 5,000/- in his HSBC Bank



Account (NRO) on three different occasions, I.e. 11.01.2014, 15.09.2014 & 14.10.2014 besides depositing an amount of Rs. 25,000/- on 07.05.2014 in the same bank In view of the aforesaid we are of the view that the accumulation of cash shown by the assessee at Rs. 4,12,000/- as on 31.05.2015 is unacceptable.

6.6.7 of Rs. 4,12,000/- during the AY 2016-17 can not be held to be explained as almost entire payment of Rs. 4,50,000/- in the beginning of the year itself, is out aforesaid brought forward balance.”

5.1 We do not agree with the finding of the Ld. DRP on this issue because once the money withdrawn from the bank account has been found to be verified, the Ld. DRP cannot decide without support any corroborative evidence that he would have incurred that cash against any expenditure. Only on the basis of the presumption, it cannot be held that assessee might have incurred the money withdrawal by the bank and not saved. Unless it is proved otherwise the assessee has explained source of the opening capital of Rs.4,12,000/- and there are no documentary evidence with the Revenue to hold that said cash was not accumulated and incurred by the assessee merely for the reason that the assessee in subsequent years has deposited a small amount of Rs.5,000/- and Rs.25,000/- also in the banks. The entire finding of the Ld. DRP is based on the presumptions and assumptions and not any documentary evidence and accordingly, we reject the contention of the Ld. DRP. Before us, the Ld. Counsel of the assessee has filed a detailed bank statement for the period from 2012 to 2015 and wherein relevant withdrawals have been shown as self withdrawal. The Ld. Counsel also placed reliance on the decision of the Tribunal **ITA No. 277 of 2017 in the case of Dinesh Goswami, Indore**



Bench, wherein it is held that it is the assessee who has decide himself whether to keep the money in the locker or deposit in the bank and the Assessing Officer cannot shift himself in position of the assessee.

5.2 In view of the aforesaid discussion, the grounds of all three appeal of the assessee on the merit of the addition are allowed. The grounds challenging validity of the proceedings u/s 153C of the Act are therefore, rendered academic and same are not adjudicating upon.

6. In the result, all the three appeals of the assessee are allowed.

Order pronounced in the open Court on 19/10/2023.

Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai;

Dated: 19/10/2023

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,
(Assistant Registrar)
ITAT, Mumbai