

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

BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI RAHUL CHAUDHARY (JUDICIAL MEMBER)

ITA No. 2390/MUM/2023
Assessment Year: 2016-17

Shri. Mitren Natvarlal
Thakkar
62, Ekadashi Apartment,
Dr., Parekh Street,
Prathana Samaj,
Mumbai- 400004

Vs.

DCIT, Central Circle- 8(4)
National Faceless Appeal
Centre,
Matru Mandir Tardev Road
Mumbai- 400007

PAN No. AABPT 0950 H
Appellant

Respondent

Assessee by : Ms. Ridhisha Jain
Revenue by : Shri. Manoj Kumar Singh, Sr. DR

Date of Hearing : 08/11/2023
Date of pronouncement : 09/11/2023

ORDER

PER OM PRAKASH KANT, AM

This appeal by the assessee is directed against order dated 15.06.2023 passed by the Ld. Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre, Delhi (in short Ld. CIT(A)) for assessment year 2016-17, raised following grounds:-

- 1. On the facts and in the circumstances of the case and in law and Hon'ble CIT(A) erred in confirming the addition of 84,06,734/- made by the Ld. AO u/s 68 of the Act without appreciating that assessee was not maintaining books of*



account which is a pre requisite condition for invoking provisions of section 68 of the Act.

2. On the facts and in the circumstances of the case and in law the Hon'ble CIT(A) erred in wrongly upholding the addition of Rs. 84,06,734/- made the Ld AO without appreciating the fact that the excess exempt income claimed in the return of income was due to inadvertent mistake of the accountant and the reason assigned for doing so are wrong and contrary to the provision of Income Tax Act and rules made there under.

3. Your appellant craves leave to add to, amend alter or delete any of the above grounds of appeal on or before the date of hearing.

2. Briefly stated facts of the case are that the assessee filed his return of income on 25.07.2016 declaring total income at Rs. 17,02,174/-. The return of income filed by the assessee was selected for scrutiny and the statutory notices under the Income Tax Act, 1961(In short 'the Act') were issued and complied with. During scrutiny proceedings, the Assessing Officer observed that assessee in the return of income had shown exempted share of profit from the partnership firms at Rs. 97,17,502/-, however on verification under 133 (6) of the Act from those partnership firms, it was found that the share of profit from those partnership firm was only of Rs. 13,11,128/-, which was exempted in the hands of the assessee. On being pointed out, the assessee explained that it was a typographical error by the clerical staff of its tax consultant and actual share of profit was of Rs. 13,11,128/- only. The contention of the assessee was not accepted by the Assessing Officer and he treated the difference amount of Rs. (97,17,502 – 13,11,128) = Rs. 84,06,374/- as income u/s 68 of the Act observing as under:-

2.4 The reply of the assessee is considered and not acceptable. The assessee has revised the entire share of profits from the above firms. Typographical error may occur in typing the figures i.e. escaping or incorporating digits and thereby not reworking the entire amounts of share of profits The assessee has revised the share of profits only after the notices u/s 133(6) were issued



and reply received from the partnership firms. The figures of share of profit from the firms which are not subject to Audit have been substantially decreased. The assessee states that firms at Sr. No. 2,3 & 4 are not subject to Audit and the returns are filed u/s 44AD and hence no details have been provided except copy of return of income and partnership deeds.

2.5 From the above facts, it is clear that the assessee in the return of income has claimed higher exempt income and has increased his capital. Such capital may be used for the purpose of investments, giving loans or advances etc in future for generating his income. Hence, the very purpose of showing higher exempt income in the return of income from the partnership firms is to increase his capital to introduce unaccounted money.

2.6 In view of the above facts, it is stated that the assessee has shown exempt profit of 97,17,502/- in the return of income and during the assessment proceedings furnished exempt profit of Rs. 13,11,128/- only and thus the profit is reduced by Rs. 80,06,374/-. The assessee has not explained the excess exemption claimed in the return of income with support documents. Hence, an amount of Rs. 80,06,374/- claimed on account of excess exemption 10(2A) of the Act remains unexplained and therefore denied and treated as income u/s 6 of the Income Tax Act, 1961.

3. On further appeal the Ld.CIT(A) also sustained the addition observing as under:-

5.3 The contentions Appellant Grounds of appeal the statement of facts, submissions of the appellant and the law relied upon and the order have been considered. The appellant's explanation that it was a typographical error of the clerical staff or his tax consultant is not convincing. A typographical error can be considered a human error at best, one such mistake; it cannot be done systematically, as in the instant case, where exempt income has been increased substantially. It is difficult to comprehend how such a big difference in figures reported could go unnoticed. Also, the appellant revised the share of profits only after the notices u/s 133(6) were issued and reply received from the partnership firms. Moreover, the figures of share of profit from the three firms which were not subject to Audit have been substantially decreased, subsequently by the appellant. It is correct that had the incorrect figures remained undetected, the appellant would have claimed higher exempt income in the return of income and



consequently, increased his capital without paying taxes. Therefore, find no reason to interfere with the AO's observation that the amount of Rs. 84,06,374/- claimed on account of excess exemption u/s 10(2A) of the Act remained unexplained. In view of the above discussion, the appeal on ground Nos. 1 & 2 are dismissed.

4. We have heard rival submission of the parties and perused the relevant material on record. The issue in dispute is whether the error in claiming the share of profit from partnership firms at higher value in the return of income filed as compared to the actual share of profit from the partnership firms, results into unexplained cash credit u/s 68 of the Act. According to the Assessing Officer, this difference is taxable in the hands of the assessee for reason that the assessee might utilize this income in the garb of exempted share of profit from the partnership firm. But the assessee admitted the same as inadvertent typographical error committed by the staff of the tax consultant and immediately rectified the share of the exempted income earned by the assessee. We agree with contention of the Ld. Counsel for the assessee of possibility of human error in typing the share of profit at higher value as compared to the actual value because for the reason that there was no tax liability in view of share of the profit being exempted and therefore the mistake went unnoticed till pointed out by the Assessing Officer. Evidently, assessee has not taken any benefit of said mistake in the financial statements and no where it is shown by the Assessing Officer that said amount was credited in the books of account and further shown to have been utilized for any investment. The apprehension of the Ld. Assessing Officer are based only the presumption and no such any wrong doing has been noticed leading to evasion of tax. In such circumstances, the contention of the assessee that the mistake occurred due to typographical error, cannot be rejected. In view of the aforesaid, we set aside the orders of lower authorities and the grounds raised by the assessee are allowed.



5. In the result, appeal of the assessee is allowed.

Order pronounced in the open Court on 09/11/2023.

**Sd/-
(RAHUL CHAUDHARY)
JUDICIAL MEMBER**

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;

Dated: 09/11/2023

Shubham P. Lohar

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