

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

ITA No. 2396/Mum/2023

(A.Y: 2021-22)

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| Shaju Luke Varghese, 104, Hind Rajasthan Bldg, Dadasaheb Phalke Road, Dadar, Mumbai-400014 | Vs. | DCIT – 20(1), Piramal Chamber, Lalbaug, Lower Parel, Mumbai-400013. |
| PAN/GIR No. : AABPL16301J | | |
| Appellant | .. | Respondent |

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| Appellant by : | Shri Rajesh. B. Gupte.Adv.AR |
| Respondent by : | Shri Virbhandra Mahajan, Sr.DR |

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| Date of Hearing | 18.10.2023 |
| Date of Pronouncement | 15.11.2023 |

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

The assessee has filed the appeal against the order of the National Faceless Appeal Centre (NFAC), Delhi /CIT (A) passed u/sec 154 and 250 of the Act. The assessee has raised the following grounds of appeal:

- 1. The LdCIT (A) erred in confirming CPC action of enhancing Income from House Property of Rs. 18,32,000/- under the head PGBP...*

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2. The Ld. CIT (A) erred in confirming the addition of Income From House Property as PGBP without accepting the fact that the rent received was offered for tax by the assessee under the head Income from House Property.

3. The Ld. CIT (A) erred in not granting 30% deduction on the gross rent at the time of reducing the corresponding gross rental Income which was taxed under the head PGBP.

2. The Appellant craves leave to add to alter and/or amend any of the Grounds of appeal mentioned hereinabove?

2. The brief facts of the case are that, the assessee is a doctor by profession and derives income from house property, income from business & profession, and income from other sources. The assessee has filed the return of income for the A.Y 2021-22 disclosing a total income of Rs.36,84,300/- and the return of income was processed u/s 143(1) of the Act dated 08.07.2022 with addition under income from business and profession of Rs.42.53.710/- and the total income was determined at Rs. 79,36,013/-. Subsequently the assessee has filed the rectification petition on 02.08.2022 against the order u/s 143(1) of the Act. Whereas the AO has sustained the addition and

dismissed the rectification petition and passed the order u/s 154 of the Act dated 01.12.2022.

3. Aggrieved by the order, the assessee has filed an appeal before the CIT(A), whereas the CIT(A) has considered the grounds of appeal, submissions of the assessee and findings of the AO and has partially granted relief to the assessee considering the facts of offering of income in the ITR but has sustained the addition of the CPC to the extent of Rs.18,32,000/- under business income and partly allowed the assessee appeal. Aggrieved by the CIT(A) order, the assessee has filed an appeal before the Hon'ble Tribunal.

4. At the time of hearing, the Ld. AR submitted that the CIT(A) has erred in not considering the factual aspects and erred in treating the rental income as business income and taxed twice. Further the CIT(A) has erred in not considering the accounting policy/system followed by the assessee, in computing the total income, where the assessee has disclosed Income from House Property separately and claimed deduction U/sec24 of the Act. Further it was accepted by the revenue in the earlier years and such

adjustments in the order is a debatable issue. The Ld.AR substantiated the submissions with the acknowledgement copy of the return of income filed for the earlier year and computation of income, Tax Audit report and prayed for allowing the assessee appeal. Per Contra, the Ld. DR supported the order of the CIT(A).

5. We heard the rival submissions and perused the material on record. The sole disputed issue envisaged by the Ld. AR that the CIT(A) has erred in partially sustaining the action of the AO without considering the facts that the assessee has disclosed in the financial statements rental income from the house property and claimed the deductions U/sec24(a) of the Act. Whereas the Ld.AR has demonstrated the statement of total income for the Assessement year 2021-22 were the Assessee has disclosed income from house property after claiming deduction U/sec24 of the Act at Rs.12,82,400/- and similarly income from business & Profession of Rs.11.04,319/- and Income from other sources of Rs.14,82,581/- and Gross total income was aggregated to Rs.38,69,300/- and after claiming the deduction Under Chapter VIA of Rs 1,

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85,000/- the taxable Total income is Rs.36,84,300/- Further, as per order U/sec143(1) of the Act the total income provided/ offered by the assessee is Rs.36,84,300/- and income computed U/sec143(1) of the Act was determined at Rs. Rs. 79,36,013/- and rectification petition u/sec154 of the Act was rejected. Prima facie on verification of the facts and evidences substantiating the claim, the total income as per the computation of income is Rs.36,84,300/-. The Ld. AR demonstrated the Acknowledgement of ITR- 3 filed for A.Y 2020-2021 & A.Y 2021&22 along with the computation of income disclosing the rental income under "Income From house Property". Further the Ld.AR highlighted on the Tax Audit report U/sec44AB of the Act along with the Form.3CB&CD in support of the Income from business and profession and the total income cannot exceed Rs.38,69,300/-. Prima facie, we find there is no dispute on the disclosure of income and cannot be taxed twice and the revenue has been accepting consistent accounting system adopted by the assessee. Accordingly, we considering the facts and circumstances, set-aside the order of the CIT(A) on the disputed issue of sustaining the

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addition of Rs.18,32,00/- made by the CPC and direct the assessing officer to delete the addition and allow the grounds of appeal in favour of the assessee.

6. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 15.11.2023.

Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 15.11.2023

KRK, PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT (Judicial)
4. The PCIT
5. DR, ITAT, Mumbai
6. Guard File

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Asst. Registrar)
ITAT, Mumbai