

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

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

ITA No. 3017/MUM/2023
Assessment Year: 2019-2020

Umesh Ramesh Patil,
Jai Malhar Builders &
Developers Kalyan Padgha
Road, Near Gandhari Bridge
Bapgaon, Bhiwandi-421 302.
PAN NO. AAVPP 4945 L
Appellant

Vs. CIT (Appeals),
Office of Asstt. CIT Central
Circle 1, Thane-400604.

Respondent

Assessee by : Mr. Dharmesh Shah/Ms. Mitali
Parekh

Revenue by : Mr. Ujjawal Kumar Chavan, Sr. DR

Date of Hearing : 20/12/2023
Date of pronouncement : 21/12/2023

ORDER

PER OM PRAKASH KANT, AM

This appeal by the assessee is directed against order dated 07.07.2023 passed by the Ld. Commissioner of Income-tax (Appeals), Pune [in short 'the Ld. CIT(A)'] for assessment year 2019-2020, raising following grounds:

1. The Ld. officer erred in not allowing the standard deduction claimed by the appellant towards the Income from House Property - Interest charged for Repayment of Housing Loan u/s 24B and Deduction under section 80C.



2. *The learned Assessing officer failed to consider the fact that the income offered by the appellant during the course of survey is not conclusive and final. The appellant is not from a financial background and not conversant with the laws to compute the income to be offered exactly.*

3. *The learned Assessing officer failed to consider the judgement of the Hon'ble Supreme Court in the case of CIT Vs. S. Kader Khan Son 352 ITR 480 (SC) wherein it was held that "the statement recorded during survey has no evidentiary value". Hence the addition made by the Assessing officer based on the Sworn statement recorded during survey is not tenable in law.*

4. *The learned Assessing officer failed to consider the Circular issued by CBDT vide CBDT Letter F.No. 286/2/2003 - IT(Inv) dt 10.03.2003 wherein it is stated that "I am further directed to invite your attention to the Instructions / Guidelines issued by CBDT from time to time, as referred above, through which the Board has emphasized upon the need to focus on gathering evidences during Search/Survey and to strictly avoid obtaining admission of undisclosed income under coercion/undue influence. In view of the above, while reiterating the aforesaid guidelines of the Board, I am directed to convey that any instance of undue influence/coercion in the recording of the statement during Search/Survey/Other proceeding under the IT. Act, 1961 and/or recording a disclosure of undisclosed income under undue pressure/coercion shall be viewed by the Board adversely." Hence the addition made by the Assessing officer based on the sworn statement during survey is not as per the*

5. *On the facts and in the circumstances of the case and in law, the Ld. Officer has been imposing tax @ 60% under 115BBE which is unsustainable and the Assessee has declared all the income in the Income Tax Return of the respective period after claiming the standard deduction allowable as per Income Tax Act, 1961.*

2. At the outset, the Ld. Counsel for the assessee submitted that the Ld. CIT(A) has dismissed the appeal of the assessee *in-limine* for non-payment of part of self-assessment tax. The Ld. Counsel submitted that assessee has now paid the balance self-assessment tax and requested that appeal may be restored back to the Ld. CIT(A) for deciding afresh on merit. The Ld. Departmental Representative (DR) did not object seriously.



3. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. Out of the returned tax liability of Rs.66,84,053/-, the assessee paid only amount of Rs.15,27,000/- at the time of filing of return of income and the remaining self-assessment tax of Rs.51,57,050/- was not paid till the date of the filing of the appeal before the Ld. CIT(A), therefore, the Ld. CIT(A) following the decision of the Hon'ble Karnataka High Court in the case of D. Komalakshi v. DCIT 291 ITR 99 (Karnataka HC) and decision of the Hon'ble Bombay High Court in the case of CIT v. Manoj Kumar Beriwal 316 ITR 218 (Bom) dismissed the appeal of the assessee *in-limine* observing as under:

"8. In the present case, the appellant had filed his Rol declaring total income of Rs. 1,44,18,010/- on 24/09/2020. Out of the total returned tax liability of Rs. 66,84,053/-, the appellant paid only an amount of Rs. 15,27,000/- at the time of filing his Rol. The appellant had not paid the balance tax of Rs. 51,57,050/- till the date of filing of his appeal. The situation in this regard remains unchanged even during the appellate proceedings. Since, the requirement of section 249(4) (a) of paying the tax due on the income returned at the time of filing of the appeal is not complied with by the appellant, the appeal presented by the appellant cannot be admitted as per section 249(4) of the I.T. Act. Accordingly, the appeal for AY 2019-20 is DISMISSED in-limine. With the result, the appeal is DISMISSED for statistical purposes."

3.1 Now Before us, the Ld. Counsel for the assessee has filed a copy of the Form No. 26AS and copy of the challans through which the balance tax has been paid, therefore, we feel it appropriate to restore the issue back to the file of the Ld. CIT(A) for verification of the payment of the tax as required under the provisions of section 249(4) of the Income-tax Act, 1961 and thereafter decide the appeal



of the assessee on merit subject to adequate opportunity of being heard provided to the assessee.

4. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 21/12/2023.

Sd/-
(RAHUL CHAUDHARY)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai;

Dated: 21/12/2023

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