

THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "SMC" BENCH

Before: Ms. Suchitra Kamble, Judicial Member

**ITA No. 705/Ahd/2023
Assessment Year 2012-13**

Darshan Nareshbhai Patel, Ahmedabad PAN: BIMPP1957L (Appellant)	Vs	The Income Tax Officer, Ward-5(3)(2), Ahmedabad, (Respondent)
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Assessee by: Shri M.K. Patel, A.R.

Revenue by: Shri Purushottam Kumar Jain, Sr. D.R.

Date of hearing : 09-01-2024
Date of pronouncement : 12-01-2024

आदेश/ORDER

This is an appeal filed against the order dated 12-12-2019 passed by National Faceless Appeal Centre (NFAC), Delhi for assessment year 2012-13.

2. The grounds of appeal are as under:-

“1. That on facts, and in law, the learned NFAC and AO has grievously erred in not at all considering the submissions and evidences filed, and in dismissing the appeal for unjustified reasons mentioned in para 6.7 and 6.8 of the order under appeal.

2. That on facts, and in law, the learned AO has grievously erred in re-opening the assessment u/s 147 of the Act based on reasons recorded which are incorrect and erroneous on facts.

3. That on facts, and in law, the learned NFAC has grievously erred in confirming the addition made u/s 69B of the Act of Rs. 20,50,000/- in respect of alleged 'on money' paid for purchase of property.

4. The appellant craves liberty to add, alter, amend any ground of appeal.”

3. The assessee filed original return of income on 27-02-2013 declaring total income of Rs. 1,36,740/- for the year under consideration. After receiving the information, the Assessing Officer observed that the assessee booked property i.e. Escon Platinum Block J/802 by advancing the amount of Rs. 20,50,000/- in cash during assessment year 2012-13 and the same was not disclosed in particulars of income. Therefore, the case was reopened and issued notice u/s. 148 of the Act dated 30-03-2019 and served upon the assessee. All the statutory notices were received by the assessee and the assessee filed its reply thereby stating that the assessee has not done any transaction with the JP Escon Group and the

assessee was not having any bank account in Allahabad Bank. After taking cognizance of the same, the Assessing Officer observed that the assessee did not reply the show cause notice and therefore made addition of Rs. 20,50,000/- u/s. 69B presuming the same as on money payment done by the assessee.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The ld. A.R. submitted that the assessee never had transaction with the JP Escon Group and never had any bank account in Allahabad Bank. The Ld. A.R. further pointed out that in the show cause notice issued to the assessee by the Assessing Officer, the name reveals that the Varshaven Patel had paid cash and there was no communication in the reasons that the assessee had paid the said cash. As regards the cancellation and the refund of the money, the ld. A.R. pointed out that the assessee has not signed the said copy which was found by the Assessing Officer in the search of Escon Platinum. In fact, the ld. A.R. pointed out the assessment which was produced by the ld. D.R. and stated that the Escon Platinum and the particular flat was also mentioning the Rashmikant Sheth and the booking is done by

A Gupta and the assessee's name was not verified by the Assessing Officer as well as by the CIT(A) from the said documents. Thus, the ld. A.R. submitted that the addition itself is not justifiable.

6. The ld. D.R. submitted that the assessee has very well purchased the flat and relied upon the order of the CIT(A) and Assessment order.

7. Heard both the parties and perused all the relevant materials available on record. It is apparent from the perusal of the records and the submissions of the assessee during the assessment proceedings as well as before the CIT(A) reveals that the assessee has not purchased any property and in fact it is a case of mistaken identity. The Assessing Officer has not taken the cognizance of the assessee's submission in respect of denial of the said transaction on the part of the assessee when the assessee categorically pointed out that the assessee does not have any account in the said bank. The Assessing Officer has never issued any notice to the said Allahabad Bank as well as to the Escon Group for verifying the contentions of the assessee. The assessee has filed return of income and has revealed all his bank accounts. In fact, the reasons recorded also mentions some other party and the documents found for the assessment record are also some other party name.

Therefore, the Assessing Officer as well as CIT(A) was not justified in making addition in the hands of the assessee in respect of section 69B regarding on money investment in purchase of property/flat. The appeal of the assessee is allowed.

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

Order pronounced in the open court on 12-01-2024

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Ahmedabad : Dated 12/01/2024

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद