

IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, MUMBAI

**BEFORE SHRI OM PRAKASH KANT, AM AND
MS. KAVITHA RAJAGOPAL, JM**

ITA No. 2867/Mum/2023
(Assessment Year: 2011-12)

Hitesh Jagshi Mota A/1905, Samridhhi Gardens, Lakdawala Chawl, Opp. Ishwar Nagar, Bhandup (W), Mumbai-400 078	Vs.	Income Tax Officer – Ward 29(1)(4) Mumbai
PAN/GIR No. AAGPM 9875 P		
(Assessee)	:	(Respondent)
Assessee by	:	Shri Vishal Shah
Respondent by	:	Ms. Kakoli Ghosh
Date of Hearing	:	29.01.2024
Date of Pronouncement	:	29.01.2024

ORDER

Per Kavitha Rajagopal, J M:

This appeal has been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals) (‘Id.CIT(A) for short), National Faceless Appeal Centre (‘NFAC’ for short) dated 15.06.2023 passed u/s.250 of the Income Tax Act, 1961 (‘the Act’), pertaining to the Assessment Year (‘A.Y.’ for short) 2011-12.

2. The assessee has challenged the present appeal on the following grounds:

1. *On the facts and under the circumstances of the case and in law, the Learned Commissioner of Income Tax (Appeals) erred in confirming the action of AO of making addition of Rs. 11,65,500/- which is bad in law and facts both.*

2. a. *On the facts and under the circumstances of the case and in law, the Learned Commissioner of Income Tax (Appeals) erred in confirming the action of AO of accepting statement of employee of Sunshine group made generally and not specific to the Appellant and confirming addition on the difference in agreement value and the market value of flat without appreciating the fact that the flat was purchased in 2009 and only Registration was completed in 2011.*

b. *On the facts and under the circumstances of the case and in law, the Learned Commissioner of Income Tax (Appeals) erred in confirming the action of AO of ignoring the fact that agreement to sale was made on 26-12-2009 at time of part payment when flat was booked and agreement was only registered in December 2011.*

c. *On the facts and under the circumstances of the case and in law, the Learned Commissioner of Income Tax (Appeals) erred in confirming the action of AO in stating that the difference between Agreement Value and Market Value was paid in cash and treating this difference as Income from other source and charged to tax without bringing out any cognitive evidence and merely relying on 3rd party statement which is bad in law.*

3. It is observed that the appeal is time barred by 2 days for which the assessee has filed an Affidavit for condoning the said delay. After hearing the rival submissions, we deem it fit to condone the delay of 2 days in filing the present appeal. Delay condoned.

4. The brief facts of the case are that the assessee is an individual and has filed his return of income declaring total income at Rs.3,91,796/-. The assessee's case was reopened based on the information received from DDIT pursuant to the search and seizure action carried out in M/s. Sunshine Group where the assessee is said to have paid on-money of Rs.11,65,500/- for purchase of Flat No. 1905 in Samriddhi Garden, Wing "A" project of M/s. Sunshine Housing Pvt. Ltd. during the year under consideration. The Id. Assessing Officer ('A.O.' for short) made an addition on the difference amount in market value and agreement value of the said property as 'on money' amounting to Rs.11,65,500/- and determined the total income at Rs.15,57,300/- vide assessment order dated 12.11.2018 passed u/s. 143(3) r.w.s. 147 of the Act.

5. Aggrieved, the assessee was in appeal before the Id. CIT(A) who vide an *ex parte* order dated 15.06.2023 upheld the addition made by the Id. A.O.

6. The assessee is in appeal before us, challenging the impugned order by the Id. CIT(A).

7. We have heard the rival submissions and perused the materials available on record. It is observed that the assessee has been non compliant before the Id. CIT(A) and has failed to substantiate his claim by sufficient documentary evidences. In terms of the principles of natural justice, we deem it fit to provide the assessee with one more opportunity to present his case before the first appellate authority. We, therefore, remand this issue back to the file of the Id. CIT(A) for *de novo* adjudication. The assessee is directed to co-operate with the proceedings before the first appellate authority without any undue delay.

8. In the result, the appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court on 29.01.2024.

Sd/-

Sd/-

(O P Kant)

Accountant Member

Mumbai; Dated : 29.01.2024

Roshani, Sr. PS

(Kavitha Rajagopal)

Judicial Member

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT - concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai