

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

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI SANDEEP SINGH KARHAIL, JM

ITA No.3337/Mum/2023
(Assessment Year: 2009-10)

Dhansukh Durlabhdas
Shah
601, Daya Sarita,
Gokuldham,
Goregaon East,
Mumbai - 400 063

Income Tax Officer
23(1)(6)
Earnest House,
Vs. Nariman Point,
Mumbai - 400 021

(Appellant)

(Respondent)

PAN No. AAJPS9055N

Assessee by : Mr.Madhur Agrawal, Adv.
Revenue by : Smt. Mahita Nair, Sr. DR.

Date of hearing:	30-01-2024
Date of pronouncement :	31-01-2024

ORDER

PER PRASHANT MAHARISHI, AM:

1. This appeal is filed by Sh. Dhansukh Durlabhdas Shah [Assessee / Appellant] against the appellate order passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [Ld. CIT(A)] dated 25.7.2023 for Assessment Year 2009-10, wherein the appeal filed by the Assessee against the assessment order dated 27.12.2016



passed under section 144 r.w.s. 147 of the of the Income Tax Act, 1961 (the Act) by the Income Tax Officer, Ward 18(1)(3) [Ld. AO] , was dismissed.

2. The Assessee is aggrieved and has preferred appeal raising the following grounds:

A. NO COGNIZANCE BY THE LEARNED CIT(A) OF THE SUBMISSIONS MADE BY THE APPELLANT

1. The Appellant had made submission before the learned CIT (A) against the notices under section 250 of the Act vide letter dated 7th June, 2023

2. On the facts and circumstances of the case and in law, the learned CIT (A) when passing the order under section 250 of the Act states in Para 1. that the Appellant has not filed any response to the notice and hence the order is passed on the basis of the order of the Assessing officer

3. In doing so the Learned CM(A) has erred in passing the said order without cognizance of the submission made by the Appellant on the e-portal on 7th June 2023

4. In the view of the above, the said order passed by the learned CIT (A) is without proper examination of the submissions made by the Appellant and non-est and therefore should be set aside

B. ADDITION TO THE TOTAL INCOME OF THE APPELLANT UNDER SECTION 68 OF THE ACT

5. The provisions of section 68 of the Act is limited to credits made in the books of accounts for which the assessee provides no explanation or unsatisfactory explanation

6. *However, the Assessing Officer and the learned CIT (A) has erred in considering the statement of bank account as Books of Account maintained by the Appellant.*

7. *The statement of bank account cannot be construed as Books of Account and hence does not fall within the scope of section 68 of the Act.*

8. *In the view of the above, the addition of Rs. 1.80 Crores to the total income made by the Assessing Officer and confirmed by the learned CIT (A) in the said Order is not in compliance with the provisions of the Act and hence should be set aside*

C. REFUNDABLE DEPOSIT WRONGLY CONSIDERED AS INCOME

9. *The Income Tax Officer 18(1)(3) ('the Assessing Officer') and learned CIT (A) have erred in considering refundable deposit received by the Appellant to the tune of Rs 1.80 Crores as income of the Appellant*

10. *The Assessing Officer and the learned CIT (A) has without the proper examination of the facts and circumstances of the case, made/confirmed an addition to the total income of the Appellant under section 68 of the Act*

11. *In the view of the above, the said order passed by the Assessing Officer/the learned CIT (A) are without appreciating the fact that the amount received by the Appellant was a refundable deposit which in no case can be considered as the income of the Appellant*

12. *In the view of the above it is amply clear that the said order passed by the Assessing officer and confirmed by the learned CIT(A) is bad in law and hence should be set aside.*

D. GENERAL

13. All the above Grounds of Appeal are independent of and without prejudice to, each other

14. The learned CIT (A)'s Order being contrary to the law, evidence and facts of the case, should be set aside, quashed or modified on the grounds deduced above

3. The brief facts of the case shows that the Assessee is an individual engaged in the business of finance. The Assessee filed return of income on 28.9.2009 declaring loss of Rs.6,64,569/-which was revised on 28.9.2009 at a loss of Rs.10,05,124/-. The return was processed under section 143(1) of the Act.
4. Further information was received from Director General of Income Tax (Investigation) that the Assessee has received Rs.1,79,99,920/- on 19.2.2009 in his saving bank account maintained with HSBC. The Assessee claimed that this was loan taken by him from M/s. Planet International Holding Ltd.,UAE but Assessee could not produce documentary evidence regarding the credit worthiness and genuineness of the lender. On examination of the return of income of the Assessee, in the balance sheet there was no mention of this loan of Rs.1,80,00,000/-.Therefore, proceedings were initiated under section 147 of the Act by recording reason of satisfaction and after taking approval of PCIT-18, Mumbai and notice was served under section 148 of the Act on 31.3.2016. The Assessee did not file return of income in response to such notice. Notice under Section 142(1) was issued on 9.9.2016 asking the Assessee to furnish details to prove identity, credit worthiness and genuineness of the transaction on 22.9.2016,

but the same was not complied with. Further notices were issued. On 25.4.2016, the Assessee sought adjournment. Subsequently, it was stated that the above sum was sent to him in his HSBC account by M/s. Planet International Holding Ltd.,UAE. Mr. C.P. Sivraj who is the Chairman of the company for his housing project in Dubai. The Assessee did not file any details of unsecured loans/advances taken such as confirmation, copy of balance sheet, bank statements or any documents to establish the identity, credit worthiness and genuineness of the transaction. Therefore, the Ld. AO examined the Assessee under section 131 of the Act on 19.12.2016 wherein certain questions were asked to him with respect to the above loan. Based on his statements, the Ld. AO noted that the Assessee has failed to produce the necessary evidence for the credit of Rs.1.80 crores in his personal capacity. The loan was provided by M/s. Tecons Oleum India Ltd., however, no documents were produced. The claim of the Assessee that it is a refundable deposit was also not substantiated. This amount was received by the Assessee on 19.2.2009 immediately after signing of the joint venture fund agreement on 11.1.2009. On examination of the Bank account of the Assessee with HSBC bank, it was found that after receiving the fund, the Assessee has withdrawn Rs.23 lakhs in cash, Rs.27 lakhs has been transferred to his son's account and Rs.25 lakhs has been transferred to the joint account of the Prasad Bopanna Rao. The balance sum is utilized for making payment to travel agencies, mutual funds and transferred to his partnership Firm and proprietary Group. Thus, the fund received were utilized for his own benefit. As the Assessee failed to specify the ingredients of the transaction, the Ld. AO passed an assessment order under section 144 r.w.s. 147 on 27.12.2016 determining total income of Rs.1,80,16,826/-



5. Aggrieved with the Ld. AO, the Assessee filed appeal before the Ld. CIT(A) which was decided by order dated 25.7.2023. The Ld. CIT(A) stated that the Assessee was given 10 opportunities on various dates but there was no response. On one of the occasions, the Assessee sought adjournment but despite that no submissions were made. Therefore, the Ld. CIT(A) decided the appeal on merits of the case and confirmed the additions. He further reached to the conclusion that the reopening of the assessment is also valid. The Assessee is aggrieved with the appellate order and is in appeal before us.

6. The Ld. Authorised Representative, Shri Madhur Agarwal submitted that the Ld. CIT(A) has failed to consider the various submissions made by the Assessee and incorrectly held that the Assessee has not submitted any details. He produced before us e-proceedings response acknowledgement wherein the Assessee has submitted written submission containing 7 pages, bank statement of the Assessee as well as 8 judicial pronouncements. This was submitted on 7.6.2023 in response to notice issued by the Ld.CIT(A) on 30.5.2023. He further submitted that on 7.6.2023, Assessee also submitted one more judicial precedent. According to him the Ld. CIT(A) is incorrect in stating that Assessee has not submitted any evidences. He further submitted an application for permitting an additional ground raised in the appeal with respect to reopening of the assessment as well as the validity of approval granted under section 151 of the Act. It was submitted that this additional ground is jurisdictional and therefore goes to the root of the matter and hence should be admitted. He further referred to his written statement placed before the Ld. CIT(A).

7. The Ld. Departmental Representative supported the order of the lower authorities and stated that the Assessee has failed to prove the identity, credit worthiness as well as the genuineness of the transaction of the receipt of Rs.1.80 crores in his bank account of the Assessee and therefore addition is correctly made by the Ld AO and upheld by the Ld. CIT(A).

8. We have heard the rival contentions and perused the orders of the lower authorities. The Assessee as an individual has undoubtedly received Rs.1.80 crores in HSBC account from one party in UAE. The re-opening of the assessment was made and thereafter assessee has failed to produce documentary evidence with respect to the above loan to show identity and credit worthiness of the lender as well as genuineness of the loan to the satisfaction of the Ld. AO. Thus, it resulted in the addition. The Ld. AO also recorded statement of the Assessee under section 131 of the Act in which Assessee admitted to have received the above sum but could not explain the ingredient under Section 68 of the Act to the Ld. AO. Thus, the addition was made by the Ld. AO. The Ld. CIT(A) dismissed the appeal of the Assessee on merits as well as against the re-opening of the assessment considering the Assessee has not submitted any response. Before us, the Assessee has submitted e-proceedings acknowledgement wherein on 7.6.2023 the Assessee has submitted various submissions including written statement as well as several judicial pronouncements. The Ld. CIT (A) passed the appellate order on 25.7.2023 without considering any of the submissions made by the Assessee. As the appellate

order was passed on 25.7.2023 this written statement as well as the evidence and contentions raised by the Assessee submitted on 7.6.2023 should have been considered by the Ld. CIT(A). Non consideration of submission made by the Assessee by the Ld. CIT(A) makes his order un-sustainable in law. Therefore we set aside the whole issue back to the Ld. CIT (A) to consider all the submissions made by the Assessee before him as well as granting further opportunities of hearing to the Assessee. The Assessee may make any further submissions, which it requires to defend his case. The Ld. CIT(A) may consider the same and decide the issue on the legalities of re-opening of the assessment as well as the merits of the addition. Accordingly, ground No.1 of the appeal is allowed with above directions. Other ground of appeal are also restored back to the Ld. CIT(A).

9. In the result, the appeal of the Assessee is allowed as directed above for statistical purposes.

Order pronounced in the open court on 31.01.2024.

Sd/-
(SANDEEP SINGH KARHAIL)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 31.01.2024

Mini Pawar, Sr.PS

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT, Mumbai



5. Guard file.

BY ORDER,

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai