

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**MUMBAI BENCH "SMC" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)**  
**AND**  
**MS. KAVITHA RAJAGOPAL (JUDICIAL MEMBER)**

**ITA No. 2959/MUM/2023**  
**Assessment Year: 2012-13**

Shri Amit Nagesh Shinde,  
B-604, Anand CHS, New Mill  
Road, Eagle Wadi, Kurla (W),  
Mumbai-400070.  
**PAN NO. AURPS 6458 D**  
**Appellant**

ITO Ward-26(1)(1),  
303, 3<sup>rd</sup> floor, Kautilya Bhavan,  
G-Block, BKC,  
Mumbai-400051.  
**Vs.**  
**Respondent**

**Assessee by** : Mr. Shashank Mehta  
**Revenue by** : Mr. Surendra Kumar Meena, Sr. DR

Date of Hearing : 08/02/2024  
Date of pronouncement : 08/02/2024

**ORDER**

**PER OM PRAKASH KANT, AM**

This appeal by the assessee is directed against order dated 23.06.2023 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment year 2012-13, raising following grounds:

*1. In the facts and circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals) has erred in upholding the action of the Ld. Assessing Officer in not allowing the interest cost, brokerage cost and civil construction work cost incurred by the appellant as 'Cost of Acquisition' while computing Capital Gains.*

*2. In the facts and circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals) has erred in upholding the action of the Ld. Assessing Officer in making addition of Rs. 4,04,000/- to total income u/s. 69A by*



*wrongly considering the deposit of business cash receipts as unexplained investments.*

*3. In the facts and circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals) has erred in upholding the action of the Ld. Assessing Officer in making addition of Rs. 2,09,009/-, by wrongly considering the same as undisclosed profit from cellular recharge commission business.*

*4. In the facts and circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals) has erred in upholding the action of the Ld. Assessing Officer in making addition in respect of business expenses of Rs. 51,510/- merely on surmises and conjectures on ad-hoc basis.*

2. Briefly stated, facts of the case are that during relevant period the assessee was engaged in the business of dealer of petrol, lubricant and oil etc. through his proprietary concern M/s Om Shree Balaji Petroleum. For the year under consideration, the assessee filed return of income on 30.09.2012 declaring total income of Rs.15,06,250/-. The return of income filed by the assessee was selected for scrutiny and statutory notices under the Income-tax Act, 1961 (in short 'the Act') were issued and complied with. In the assessment completed u/s 143(3) of the Act, the Assessing Officer made addition/disallowance in respect of (i) addition on account of short term capital gain on sale of flats, (ii) addition on account of income from commission received from Idea Cellular Ltd., (iii) disallowance of Rs.51,510/- out of salary housekeeping and convenience expenses etc. (iv) addition on account of cash deposit at Rs.4,04,000/- in Janseva Sahakari Bank Ltd.

3. On further appeal before the Ld. CIT(A), the assessee could not succeed and hence being aggrieved, is in appeal before the Income-



tax Appellate Tribunal (in short 'the Tribunal') by way of raising grounds as reproduced above.

4. In ground No. 1, the assessee is aggrieved with the deduction for cost of improvement of the flats and interest and brokerage, which has not been considered while computing the short term capital gain by the Assessing Officer. Before us, the Ld. counsel for the assessee submitted that all the details were filed before the Ld. CIT(A) in physical proceedings however, in faceless proceedings, the Ld. CIT(A) has not adjudicated the said claim of the assessee for considering the cost of improvement.

4.1 We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. We find that before the Assessing Officer no details of cost of improvement ,interest and brokerage etc. were filed. Since, the Ld. CIT(A) has not adjudicated on such claim of the assessee ,therefore, we feel it appropriate to set aside the finding of the Ld. CIT(A) on the issue of short term capital gain and restore the matter back to the file of the Assessing Officer for deciding afresh after taking into consideration documentary evidence of the assessee for its claim for cost of improvement interest, brokerage etc. The ground No. 1 of the appeal of the assessee is accordingly allowed for statistical purposes.

5. In ground No. 2, the assessee is aggrieved with the addition of Rs.4,04,000/- towards cash deposits in bank account. Before the



Assessing Officer, the assessee claimed that this amount was withdrawn from his capital account and deposited into saving bank account maintained with the Janseva Sahakari Bank Ltd. on 02.02.2011. However, the Assessing Officer rejected this contention of the assessee on the ground that in the capital account the assessee has already introduced Rs.7,47,957/-. Before the Ld. CIT(A) in physical proceedings, the assessee given another explanation that said cash was out of receipt of the business of sale of petroleum product which were supposed to be deposited in current account of the assessee but by mistake , same was deposited into saving bank account of the assessee. This explanation of the assessee has not been considered in the faceless appellate proceedings. We are of the opinion that this claim has been made for the first time before the Ld. CIT(A) and it needs verification from the books of account including the cash book of the assessee whether corresponding sales are appearing in the books of account of the assessee and not deposited in current account. Therefore, we feel it appropriate to set-aside the finding of the ld CIT(A) and restore this issue also to file of the Assessing Officer for necessary verification and deciding in accordance with law.

6. The ground No. 3 of the appeal, regarding addition of Rs.2,09,009/-, was not pressed before us on behalf of the assessee and therefore, same is dismissed as infructuous.



7. In ground No. 4 of the appeal, the assessee is aggrieved with the disallowance of Rs.51,510/- out of business expenses. Since the Ld. CIT(A) has also not adjudicated on this issue and the disallowance has been made by the Assessing Officer on ad-hoc basis. Therefore, we feel it appropriate to restore this issue back to the file of the Ld. Assessing Officer for disallowance after verification of the expenses. The ground No. 4 of the appeal of the assessee is also allowed for statistical purposes.

8. In the result the appeal of the assessee is allowed partly for statistical purposes.

**Order pronounced in the open Court on 08/02/2024.**

**Sd/-**  
**(KAVITHA RAJAGOPAL)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(OM PRAKASH KANT)**  
**ACCOUNTANT MEMBER**

Mumbai;  
Dated: 08/02/2024  
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**