

IN THE INCOME TAX APPELLATE TRIBUNAL “E” BENCH, MUMBAI
BEFORE SHRI AMARJIT SINGH, AM AND MS. KAVITHA RAJAGOPAL, JM

ITA No. 3422/Mum/2023
(Assessment Year: 2018-19)

Hemant V. Parikh 703, 704, Krushal Tower, Above Shoppers Stop, G M Road, Chembur, Mumbai-400 089	Vs.	Asst. CIT, Central Circle 3(2) Mumbai-400 021
PAN/GIR No. AADPP 2558 B		
(Assessee)	:	(Respondent)
Assessee by	:	None
Respondent by	:	Shri Biswanath Das
Date of Hearing	:	13.02.2024
Date of Pronouncement	:	26.02.2024

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)-51, Mumbai ('Id.CIT(A) for short), National Faceless Appeal Centre ('NFAC' for short) passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2018-19.

2. As there was no representation on behalf of the assessee, we hereby proceed to dispose of this appeal by hearing the learned Departmental Representative ('Id.DR' for short) and on perusal of the materials available on record.

3. The assessee has raised the following grounds of appeal:

[A] Grounds of appeal:

- 1) *The ld. CIT (A) has erred in passing the ex-parte order by not considering the financial situation and the circumstances which were beyond the appellant's control leading to non-submission of requisite details before the Ld. CIT(A).*
- 2) *The Ld. CIT (A) has erred in passing the order without considering the additions made in previous assessment years.*
- 3) *The Ld. CIT (A) has erred in confirming additions based on Special Audit Report even though the exhaustive objections have been filed by the appellant against the findings of the Special Audit Report.*
- 4) *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in upholding the Assessing Officer's ("AO") order for making an addition of Rs. 1,15,00,722/- under section 68 of the Income Tax Act, 1961 ("the Act") towards reclassification of investments.*
- 5) *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in upholding the AO'S order for making an addition of Rs. 8,09,500/- under section 69A of the Act towards unexplained investment in Fixed Deposits without considering the explanation given by the appellant.*
- 6) *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in upholding the AO's order for making an addition of Rs. 2,86,80,000/- under section 69A of the Act as unexplained investment in shares of unlisted companies without considering the explanation given by the appellant.*
- 7) *On the facts and in the Circumstances of the case and in law, the Ld, CIT(A) erred in upholding the AO's towards addition of Rs. 2,68,967/- towards negative cash balance u/s 69A of the Act by ignoring the submissions made by the appellant.*
- 8) *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in upholding the AO's action towards addition of Rs. 5,49,82,670/- u/s. 41(1) of the Act without bring any documents or supporting on record that such liability have ceased to exist.*
- 9) *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in upholding the AO's towards addition of Rs. 5,56,239/- on account of unsecured loans accepted by the appellant during the year under the provisions of section 68 of the Act by ignoring the submission made by the appellant and without bringing any concrete substance/documents on record support of such addition.*
- 10) *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in upholding the AO's by considering Rs. 7,27,13,416/- as the income receivable by the appellant from various parties including the appellant's own proprietary firms which have never accrued to the appellant.*
- 11) *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not granting the fresh claim of interest paid on business loans of Rs.5.28,57,775/- and upholding the AO's order in this matter.*
- 12) *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not granting the fresh claim of Rs. 32,02,742/- towards depreciation u/s 32 of the Act and by upholding the AO's order in this matter.*

- 13) *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not granting the fresh claim of bad debts of Rs. 83,98,249/- by upholding the AO's order in this matter and ignoring the fact that the amount which were duly recorded in audited books of accounts have become irrecoverable.*
- 14) *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not granting the fresh claim of various expenses incurred during the Concerned assessment year amounting to Rs. 6,55,533/- by upholding the AO's order in this matter and ignoring the fact that the amount which were duly recorded in audited books of accounts and have been paid through normal banking channels*
- 15) *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in upholding the AO's order towards making addition of Rs. 1,08,155/- as notional interest earned on fixed deposits.*
- 16) *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in upholding the AO's towards addition of Rs. 18,31,782/- towards negative cash balance u/s 69A of the Act by ignoring the submissions made by the appellant.*
- 17) *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in upholding the AO's towards making addition of Rs. 16,05,00,000/- as the amount receivable as per the MOU as a business income of the appellant without considering the submissions made by the appellant.*
- 18) *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in upholding the AO's action towards addition of Rs. 5,47,51,605/- u/s 68 of the Act without considering the submissions made by the appellant.*
- 19) *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in upholding the AO's action by considering an amount of Rs.5,06,76,658/- as business income of the appellant only on assumption that appellant has earned an income from sale of flats and by ignoring the submission made by the appellant.*
- 20) *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not granting the fresh claim of interest paid on business loans of Rs.29,36, 79,655/- and upholding the AO's order in this matter.*
- 21) *On the facts and in the Circumstances of the case and in law, the Ld. CIT(A) erred in not granting the fresh claim of business expenditure of Rs.10.07,55,867/- and upholding the AO's order in this matter.*
- 22) *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not granting the fresh claim of business expenditure of Rs.10.15,76,212/- by ignoring the submissions made by the appellant during assessment proceedings and upholding the AO's order in this matter.*
- 23) *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in upholding the AO's action of treating the amount of Rs. 1,39,00,000/- as unexplained money u/s 69A of the Act by ignoring the submissions made by the appellant.*

- 24) *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in upholding the AO's towards addition of Rs. 26,231/- towards negative cash balance u/s 69A of the Act by ignoring the submissions made by the*
- 25) *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not granting the fresh claim of interest paid on business loans of Rs 3,02,27,228/- and upholding the AO's order in this matter.*
- 26) *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not granting the fresh claim of business expenditure of Rs. 2,51,446/- by ignoring the submissions made by the appellant during assessment proceedings and upholding the AO's order in this matter.*
- 27) *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in disallowing the loss arising from the consent terms entered with the Adora Enclave Flat Owners Association by the appellant for Rs. 1,43,36,458/-*
- 28) *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in disallowing the loss of Rs. 23,74,154/- arising in proprietary firms.*
- 29) *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in making addition of Rs. 70,26,00,000/- on the basis of one sided /Contingent counter-claims made by the appellant in the arbitration proceedings under the provisions of section 69C of the Act.*
- 30) *The Ld. AO erred in charging interest u/s 234A & 234B of the Act.*
- 31) *The Ld., AO erred in initiating penalty proceedings u/s 271B of the Act.*
- 32) *The Ld. AO erred in initiating penalty proceedings u/s 271A of the Act.*
- 33) *The Ld. AO erred in initiating penalty proceedings u/s 271AAC of the Act.*
- 34) *The Ld. AO erred in initiating penalty proceedings u/s 270A of the Act.*
- 35) *On the facts and in the circumstances of the case and in law, the Ld. Assessing Officer ('A.O.' for short) erred in passing a high-pitched assessment order despite being aware of the fact that all the projects of the appellant were terminated and stalled and the advances received by the appellant were refundable in addition to the institutional and unsecured loans availed for the expenses of the terminated projects and also outstanding amounts to vendors & contractors which too remain payable. Accordingly, there remains no iota of doubt that there has been no accrual of income for the relevant assessment year and that the appellant had faced genuine losses.*
- 36) *The appellant reserves rights to add alter or delete any portion of this appeal before its conclusion.*

[B] Relief Prayed:

The appellant therefore prays follows,

1. *To delete the addition of Rs. 1,15,00,722/- under section 68 of the Act.*
2. *To delete the addition of Rs. 8,09,500/- under section 69A of the Act.*
3. *To delete the addition of Rs. 2,86,80,000/- under section 69A of the Act.*
4. *To delete the addition of Rs. 2,68,967/- towards negative cash balance u/s 69A of the Act.*
5. *To delete the addition of Rs. 5,49,82,670/- u/s 41(1) of the Act.*

6. *To delete the addition of Rs. 5,56,239/- u/s 68 of the Act on account of unsecured loans taken.*
7. *To delete the addition of Rs. 7,27,13,416/- as the income receivable even though the same is not accrued.*
8. *To grant a fresh claim of Rs. 5,28,57,775/- as interest paid on business loans taken.*
9. *To grant granting the fresh claim of Rs. 32,02,742/- towards depreciation u/s 32 of the Act.*
10. *To grant a fresh claim of genuine bad debts of Rs. 83,98,249/-.*
11. *To grant a fresh claim of various expenses amounting to Rs. 6,55,533/- incurred during the concerned assessment year for the purpose of business.*
12. *To delete the addition of Rs. 1,08,155/- as notional interest earned on fixed deposits.*
13. *To delete the addition of Rs. Rs. 18,31,782/- towards negative cash balance u/s 69A of the Act.*
14. *To delete the addition of Rs. Rs. 16,05,00,000/-.*
15. *To delete the addition of Rs. 5,47,51,605/- u/s 68 of the Act.*
16. *To delete the addition of Rs. 5,06,76,658/-.*
17. *To grant a fresh claim of Rs. 29,36,79,655/- towards interest payments.*
18. *To grant a fresh claim of expenditure arant a fresh claim of Rs.40,07,55,867/- towards business*
19. *To grant a fresh claim of Rs.10,15,76,212/- towards business expenditure.*
20. *To delete the addition of Rs.1,39,00,000/- as unexplained money u/s. 69A of the Act.*
21. *To delete the addition of Rs.26,231/- towards negative cash balance u/s.69A of the Act.*
22. *To delete the addition of Rs. 3,02,27,228/- towards interest payments.*
23. *To grant a fresh claim of Rs. 2,51,446/- as business expenditure.*
24. *To allow loss of Rs. 1,43,36,458/-.*
25. *To allow loss of Rs. 23,74,154/-.*
26. *To delete the addition of Rs. 70,26,00,000/-.*
27. *To not initiate penalty proceedings u/s 270A, 271A, 271B and 271AAC of the Act.*

4. The brief facts are that the assessee is an individual who is an Architect by profession and is also engaged in the business of developer and builder under various entities namely M/s. Hemant Parikh & Associates, M/s. Hemant Parikh, M/s. SSV Developers & Builders, M/s. Vinayak Realtors and M/s. Sumukh Developers. The assessee had filed his return of income dated 04.05.2019 for the year under consideration declaring total income at Rs.Nil. Pursuant to a survey action u/s. 133A of the Act dated 20.03.2018, various discrepancies in the books of accounts along with the incriminating records were found and impounded. The assessee's case was selected for scrutiny and notices u/s. 143(2) and 142(1) of the Act were duly issued and served upon the assessee. The assessee's case was referred for special audit u/s. 142(2A) of the Act owing to the

nature and complexity of the accounts of the assessee. The ld. A.O. then passed the assessment order dated 09.12.2021 u/s. 143(3) of the Act determining the total income at Rs.115,39,05,950/- including the addition of Rs.81,49,25,046/- as per the provisions of section 115JB of the Act by making various additions /disallowances. The ld. A.O. also initiated the penalty proceedings for the same.

5. Aggrieved the assessee was in appeal before the ld. CIT(A), challenging the assessment order.

6. The ld. CIT(A) vide order dated 31.07.2023 passed an *ex parte* order by holding the impugned additions made by the ld. A.O. on the ground that the assessee has been non compliant before the first appellate authority.

7. The assessee is in appeal before us, challenging the impugned order passed by the ld. CIT(A).

8. The learned Departmental Representative ('ld.DR' for short) for the assessee contended that the assessee has not substantiated his claim before the ld. A.O. and has also been non compliant even during the earlier assessment proceedings and before the ld. CIT(A). The ld. DR relied on the orders of the lower authorities.

9. We have heard the ld. DR and perused the materials available on record. It is observed that the lower authorities have made various additions/disallowances under various provisions of the Act. The assessee has been non compliant even before us. On considering the nature of the addition/disallowances and the quantum of demand, we

deem it fit to remand this issue back to the file of the Id. CIT(A) for the purpose of providing the assessee with one more opportunity to present his case before the first appellate authority on the principles of natural justice. We, therefore, remand all the issues back to the file of the Id. CIT(A) for fresh adjudication with the direction that the assessee should co-operate with the proceeding before the first appellate authority without any undue delay.

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

Order pronounced in the open court on 26.02.2024.

Sd/-

(Amarjit Singh)
Accountant Member

Mumbai; Dated : 26.02.2024
Roshani, Sr. PS

Sd/-

(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