

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "B", MUMBAI**

BEFORE SHRI ABY T VARKEY, HON'BLE JUDICIAL MEMBER

AND

SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER

ITA NO. 3865/MUM/2023 (A.Y: 2009-10)

Bhalchandra P. Dalvi 1, Himalaya Society Milind Nagar Sangrae English School Ghatkopar (W), Mumbai - 400084 PAN: AAMPD3092P	v.	Income Tax Officer – 28(1)(2) Income Tax Office Vashi Railway Station, Tower No. 6 Navi Mumbai - 400703
(Appellant)		(Respondent)

ITA NO. 2549/MUM/2023 (A.Y: 2009-10)

Bhalchandra P. Dalvi 1, Himalaya Society Milind Nagar Sangrae English School Ghatkopar (W), Mumbai - 400084 PAN: AAMPD3092P	v.	Income Tax Officer – 27(1)(2) Income Tax Office Vashi Railway Station, Tower No. 6 Navi Mumbai - 400705
(Appellant)		(Respondent)

Assessee Represented by	:	Shri Dinesh Shah
Department Represented by	:	Ms. Ashok Kumar Ambastha
Date of conclusion of Hearing	:	18.01.2024
Date of Pronouncement	:	21.02.2024

ORDER

PER S. RIFAUR RAHMAN (AM)

1. The appeal in ITA No. 3865/MUM/2023 is filed by the assessee against order of Learned Commissioner of Income-Tax (Appeals)-26, Mumbai [hereinafter in short "Ld. CIT(A)"] dated 15.11.2019 for the A.Y.2009-10. Appeal in ITA No. 2549/MUM/2023 is filed against order of Learned Commissioner of Income-Tax (Appeals), National Faceless Appeal Centre, Delhi [hereinafter in short "Ld. CIT(A)"] dated 26.05.2023 for the A.Y.2009-10.

2. Since the issues raised in both these appeals are identical, therefore, for the sake of convenience, these appeals are clubbed, heard and disposed off by this consolidated order. We are taking Appeal in ITA.No. 3865/MUM/20239 for Assessment Year 2009-10 as a lead appeal.

3. Assessee has raised following grounds in its appeal: -

"1. The Assessing Officer WARD 28(1)(2) Mumbai erred in making addition u/s. 69A of IT Act, 1961 Rs. 39,57,275/- The Appellant has deposited sale consideration of flat and other income and past saving and CIT (A) also erred in confirming the addition u/s. 69A and raised incorrect disputed tax demand of Rs.20,75,534/-

2. *The Assessing officer has not issued and served properly notice u/s. 148 and or section 142(1) of IT ACT 1961. No show cause notice for the proposed addition was made. The Learned CIT (A) 26 also erred in not serving the notice u/s. 250(1) of IT Act, 1961 and has dismissed the Appeal.*

3. *On the facts and circumstances of the case section 69A is not applicable to the assessee / appellant at all.*

4. *The delay in filing appeal against CIT(A) 26 Mumbai be condoned. The Appellant has filed humble request to condone the delay in filing Appeal."*

4. At the time of hearing, Ld. Counsel for the assessee brought to our notice relevant facts of the case and filed affidavit from the assessee and petition along with additional evidences and prayed for admission of additional evidences. Ld. Counsel for the assessee furnished additional evidences in the form of (i) Bank Passbook / statements (ii) Sale agreement and confirmation of the seller that he/they have paid cash against the purchase of flats and (iii) The Loan confirmation letters so that the correct income can be determined. Ld.AR of the assessee prayed that these additional evidences go to the root of the matter and the same may be admitted and remitted to the file of the Ld. CIT(A) for examination. For the sake of clarity, the contents of the affidavit are reproduced below: -

"1.1 The Appellant has filed original return of Income on 01/07/2009 (i.e. under section 139(1) of Income tax Act, 1961 declaring total income of Rs. 2,83,636/-

1.2 The AO issued notice u/s. 148 and 142(1) but the appellant who is non conversant with taxation and accounts did not properly able to understand the impact of such action.

1.3 The Assessment u/s. 143(3) read with section 147 was passed on 27/2/2015 assessing income as under:-

<i>The Returned Income</i>	<i>Rs. 2,83,636</i>
<i>Add: Unexplained money u/s. 69A Being cash or other deposits in bank of baroda actually the Appellant has sold flat for Rs. 22,25,000/- and other Amount of income declared in the Current years and or earlier years and raising of Loans and borrowing from friends and others</i>	<i>Rs. 39,57,276</i>
<i>Total Assessed income</i>	<i>Rs. 42,40,910</i>

1.4 The Appellant AR M/s. Gajra & Nanda Associates, Tax consultants filed appeal against AO's order dt. 27/02/2015 on 30/4/2015 (Note order dated 27/2/2015 was served on the assessee on 17/3/2015)

1.5 The Learned CIT (A) 26 Mumbai Appeal reference no. CCIT (A) 26 Mumbai Appeal reference no. CIT(A) - 26 Mumbai10444/2015-16 passed exparte order on 15/11/2019.

1.6 The Appellant as well as Appellant's A.R. M/s. Gujra & Nanda Associates were not aware of this facts at all.

2.1 The Assessing officer once again issued notice u/s. 148 on the assessee. The Assessee has filed the return of income in response to notice u/s. 148 on 5th January, 2016 declaring total income Rs. 2,83,636

2.2 The Assessing officer passed order u/s. 143(3) read with section 147 on 29/03/2016 and computed income as under.

2.3 The appellant was not aware of the facts and his returned income was less than Rs. 5,00,000/- and was not liable to tax Audit. He was under honest and bonafide belief the paper appeal

can be filed . The Assessee filed paper appeal on 29/04/2016 which was summarily dismissed without giving opportunities.

2.4 The Appellant filed by virtual mode i.e. in electronic mode appeal for the assessment year 25/10/2018.

2.5 The Appellant submitted various details in response to National Faceless Appeal Centre (NFAC) Delhi Notices. The Appellant was under honest and bonafide belief that for the AY 2009-10 when two assessment orders are passed u/s. 143(3) read with section 147 of IT Act, 1961 i.e. order dated 27/02/2015& on 29/03/2016 The Appeal is merged.

2.6 See para 6.3of CIT(A) National Faceless Appeal Centre (NFAC) Delhi order dt. 26/05/2023 DIN & Order no. ITBA/NFAC/S/250/2023- 24/1053219959(1)

2.7 Para No.6.2 In this regard the earlier appeal was filed by the appellant mentioned in reply stated above was kept in abeyance fresh opportunities granted vide notice dated 18/04/2023 &08/05/2023 to file submission ultimately this order was passed on 28/05/2023.

3. The Appellant filed appeal against this order of CIT(A) NFAC-Delhi in the Income tax Tribunal in the month of August 2023.

4. When the Regular consultant and A.R. M/s. Gajra and Nanda Associates handed over my income tax matter to be represented by M/s. Dinesh Rasiklal Shah & Co. CA's,they made full enquiries and checking of the notices and appeal pending before CIT (A) then I came to know through them that my appeal against 27th March 2015 order for the A.Y. 2009-10 was already disposed off by the CIT(A) 25 vide his order dated 15/11/2019

5. I came to know this facts only on 21st October, 2023.

6. I was advised unless you filed appeal against order passed u/s. 250 for the A.Y. 2009-10 against AO's order passed on 27th Feb., 2015 you will not in position to state correct affairs before income tax tribunal. You will not set full justice. In view of this special circumstances. I am layman non conversant with taxation and accounts matter. There is delay in filing appeal before your honour. There is delay of about _____ days.

7. As per CIT (A) 26 order is passed on 15/11/2019 as per this order the appeal ought to have been filed within 60 days of receipt of these order i.e. on or before 14/01/2020 in the month of March 2020 Corona declared then time limit was extended . The position

became normal in the month of April 2022 onwards the appellant came to know the correct position only when he was advised in the month of October 2023. Thus there were peculiar circumstances. It was in the interest of the assessee to file appeal in time by delaying in filing appeal the appellant will not gain anything at the same time. The constitution of India say the tax should be collected on true income actually earned by the assessee the tax should be collected.

8. The Appellant was under honest and bonafide belief that my first appeal is pending and or has merged with second appeal and the appellant has filed appeal against this appeal in the income tax tribunal.

9. Thus considering the above special and peculiar circumstances. The Appellant humbly request your honour to admit the appeal and merged both appeal filed before your honour i.e. in the income tax appellant Tribunal.

10. I humbly request your honour to admit and additional evidences i.e.

(i) Bank Passbook / statements

(ii) Sale agreement and confirmation of the seller that he/they have paid cash against the purchase of flats

(iii) The Loan confirmation letters so that my correct income can be determined.

Whatever stated above is true and correct to the best of my knowledge and belief."

5. Further, Ld.AR of the assessee submitted that Ld.CIT(A) passed exparte order without providing adequate opportunity of being heard to the assessee, therefore, considering additions/disallowance made by the Assessing Officer, Ld. Counsel for the assessee requested that the matter may be restored to the file of the Ld.CIT(A).

6. Ld. DR has no serious objection in remitting the matter back to the file of the Ld.CIT(A).

7. Considered the rival submissions and material placed on record, on a perusal of the Ld.CIT(A) order, we find that even though the Ld.CIT(A) provided opportunity on several occasions assessee could not appear or utilized the opportunities. Considering the totality of facts and submissions of the Ld. AR and keeping in view the additions/disallowance made by the Assessing Officer, we are of the opinion that assessee should be given one more opportunity of being heard.

8. Further, on a perusal of the additional evidences furnished before us, we are of the view that these evidences go to the root of the matter, accordingly the same are admitted. These evidences have to be examined by the Ld. CIT(A) as these evidences were not available for verification at the time of appellate proceedings. Thus, we restore all these additional evidences and the issue in hand to the file of the Ld.CIT(A) for denovo adjudication in accordance with law. The assessee may file all these evidences before the Ld. CIT(A) to substantiate its claim. Needless to say that the assessee shall cooperate with the

appellate proceedings before the Ld.CIT(A) without taking unnecessary adjournments and the Ld.CIT(A) shall provide adequate opportunity of being heard to the assessee.

9. In the result, appeal of the assessee is allowed for statistical purpose.

ITA No. 2549/MUM/2023 (A.Y. 2009-10)

10. Coming to the appeal relating to ITA No. 2549/MUM/2023 (A.Y.2009-10), since facts in this case are mutatis mutandis, therefore the decision taken in ITA No. 3865/MUM/2023 (A.Y. 2009-10) is applicable to this appeal also. Accordingly, this appeal is allowed for statistical purpose.

11. To sum-up, appeals filed by the assessee are allowed for statistical purpose.

Order pronounced in the open court on 21st February, 2024.

Sd/-
(ABY T VARKEY)
JUDICIAL MEMBER

Mumbai / Dated 21/02/2024
Giridhar, Sr.PS

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

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

(Asstt. Registrar)
ITAT, Mum