

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

**BEFORE SHRI PAVAN KUMAR GADALE, JM &
MS PADMAVATHY S, AM**

**I.T.A. No. 3991/Mum/2023
(Assessment Year: 2013-14)**

Niraj Vardhichand Bamb A-4, Ashiyana CHSL, Sector No. 17, Vashi- 400705. PAN : ADZPB6501H	Vs.	ITO Ward-28(2)(1) Vashi, Navi Mumbai.
Appellant)	:	Respondent)

Appellant/Assessee by : None
Revenue/Respondent by : Shri R.R. Makwana, JCIT

Date of Hearing : 15.04.2024
Date of Pronouncement : 16.04.2024

ORDER

Per Padmavathy S, AM:

This appeal is against the order of the Commissioner of Income Tax (Appeals) / National Faceless Appeal Centre, Delhi [for short 'the CIT(A)] dated 08.09.2023 for the AY 2013-14. The assessee raised the following grounds:

“The Learned Commissioner of income tax (Appeal) grossly erred in confirming Addition of Rs. 754500/- without appreciating to the facts, Merits and Submission submitted before Learned Commissioner of income tax (Appeal) and before Assessing officer

2. The appellant craves leave to add, amend, alter, modify, substitute or withdraw all or any of the above Grounds of appeals or to add ne ground/grounds of appeal as may be necessary on or before hearing this appeal. In the view of above, the appellant prays that his appeal may be accepted and allowed.”

2. The assessee is an individual and filed the return of income for AY 2013-14 on 26.09.2013 declaring total income of Rs.12,19,910/-. A search and survey action was conducted in the case of M/s Bhagwati Developers and its group concerns (the group) on 15.10.2018. A statement was recorded under section 132(4) during the search operation from one Mr. Kulin Shantilal Vora who looks after the sales of the projects of the group who admitted that the group received On-money for sale of flats and shops. During the course of search proceedings the group submitted unit wise and flat wise details of On-money received by them from all the projects undertaken by the group. From the perusal of the said details the assessee's AO noticed that the assessee has purchased shop no.11 in Green Palm, Ghansoli for a consideration of Rs. 20,00,000/- whereas as per the seized documents from the group the total consideration was Rs. 27,54,500/-. The AO based on the said information reopened the assessment of the assessee and issued noticed under section 148 of the Act. The assessee furnished the return of income declaring the same income of Rs.12,19,910/- in response to the said notice. The AO issued a show-cause notice to the assessee as to why the difference of Rs. 7,54,500/- (Rs.27,54,500 less Rs.20,00,000) cannot be treated as unexplained in the hands of the assessee. The AO completed the assessment under section 144 r.w.s. 147 of the Act treating the entire amount as unexplained for the reason that the assessee did not file any reply providing explanation for the excess amount.

3. Before the CIT(A), the assessee submitted that no On-money payment are made by the assessee and submitted the details of payments made through A/c payee cheques for Rs.22,20,093/- including the stamp duty charges for registration. The assessee further submitted that the AO has merely relied on the statements recorded under section 132(4) without any other evidence to support the claim that

the assessee has made any cash payments to the group. The CIT(A) called on the assessee to furnish the purchase deed of the shop and the bank statements from which the assessee carried out the transaction for further adjudication. However since the assessee failed to furnish the details as called for, the CIT(A), confirmed the addition made by the AO.

4. The assessee is in appeal before the Tribunal against the order of the CIT(A). None appeared on behalf of the assessee and the ld. DR relied on the order of the lower authorities. From the perusal of the records it is noticed that the assessee has furnished details such as the date-wise payment made thorough A/c payee cheque towards the purchase of the shop. It is also noticed that the assessee pleaded before the CIT(A) for an opportunity to cross-examine Mr. Kulin Shantilal Vora based on whose statements the AO made the addition. We further noticed that the CIT(A) called on the assessee to furnish further details such as purchase deed, bank statement etc. which the assessee did not furnish before the CIT(A). Therefore in the interest of natural justice and fair play, we restore the issue back to the CIT(A) for a fresh consideration of the issue and decide in accordance with law. The assessee is directed to furnish all the relevant details as may be called for by the CIT(A) and cooperate with the appellate proceedings. It is ordered accordingly.

5. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 16.04.2024

Sd/-
(PAVAN KUMAR GADALE)
Judicial Member
**SK, Sr. PS*

Sd/-
(PADMAVATHY S)
Accountant Member

Copy of the Order forwarded to :

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

BY ORDER,
(Dy./Asstt. Registrar)
ITAT, Mumbai